

JUL 11 1979

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IN THE
Supreme Court of the United States
Term, 1979

No. **79-49**

JAMES T. M. PREST,

Appellant,

vs.

ROBERT L. HERBST, Individually and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, Individually, and as Auditor for St. Louis County; the STATE OF MINNESOTA, LEE VAN, as Commissioner of the Minnesota Department of Economic Development; ARTHUR C. ROEMER, as Commissioner of the Minnesota Department of Revenue, and the MINNESOTA CHIPPEWA TRIBE,

Defendants-Respondents.

On Appeal from the Supreme Court of Minnesota

JURISDICTIONAL STATEMENT

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IN THE
Supreme Court of the United States

____ Term, 1979

No. _____

ALLISON CONTOS, DANIEL S. CASH, BARBARA JOHNSON, ALWORTH LAND AND IMPROVEMENT COMPANY, BURLINGTON NORTHERN, INC., CLOQUET LUMBER COMPANY, DOROTHY M. CROSBY, Individually and as Executrix of the Estate of JOHN Q. A. CROSBY, DAY DEVELOPMENT COMPANY, JAMES T. M. PREST, UNITED STATES STEEL CORP., ST. CROIX LUMBER COMPANY, TORINUS COMPANY, FIRST NATIONAL BANK OF MINNEAPOLIS, as Trustee under various instruments of trust, NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, BOISE CASCADE CORPORATION, DR. ERNEST A. GOFF, JR. and PAUL M. ANDRESEN,

Plaintiffs-Appellants,

vs.

ROBERT L. HERBST, Individually and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, Individually, and as Auditor for St. Louis County; the STATE OF MINNESOTA, LEE VAN, as Commissioner of the Minnesota Department of Economic Development; ARTHUR C. ROEMER, as Commissioner of the Minnesota Department of Revenue, and the MINNESOTA CHIPPEWA TRIBE,

Defendants-Respondents.

On Appeal from the Supreme Court of Minnesota

JURISDICTIONAL STATEMENT

Appellant, James T. M. Prest, one of the 18 Plaintiffs, appeals from the judgment of the Supreme Court of the State of Minnesota, entered on January 26, 1979, affirming the judgment of the District Court, Second Judicial District, State of Minnesota, dated June 14, 1976, and entered October 20, 1976. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The Opinion of the Supreme Court of the State of Minnesota is reported in — Minnesota —, 278 NW 2d 732 (1979), and is included commencing at page A-110 of the Appendix hereof. The Findings of Fact, Conclusions of Law and Order for Judgment of the District Court in and for Ramsey County, Minnesota, are included in the Appendix (A-70 to A-87).

JURISDICTION

The original action sought a declaration that Article XX of Chapter 650, Laws of Minnesota, 1973, (hereinafter referred to as the "Act"), was unconstitutional and further sought an injunction prohibiting the enforcement of the Act. In the amended Complaint, it was alleged that the Act specifically violated the Uniformity and Due Process requirements of the Minnesota Constitution, Article IX, Section 1, and Article I, Section 7, and of the United States Constitution, Amendment XIV, Section 1, and further specifically alleged that the Act violated the Equal Protection clause of the United States Constitution, Amendment XIV,

Section 1. (A-4 to A-7) The State District Court found that the Act, with regard to classification and treatment for tax purposes, of severed mineral interests separately and apart from unsevered mineral interests, as well as all other interests in real property, violated neither the Equal Protection provision of the Minnesota, nor the Federal Constitutions. The District Court found that the Act did not violate the Minnesota constitutional prohibition against special legislation. The District Court found the taxation of severed mineral interests in the manner and at the rate provided by the Act, violated neither the uniformity clause of the State Constitution, nor the Due Process clause of the United States Constitution. The District Court found the Act constitutional in all respects, except that the Act violated the Due Process clause of the State and Federal Constitutions by failing to provide the owners of severed mineral interests with adequate notice and an opportunity to be heard prior to depriving them of their property. The forfeiture provisions of the Act were found to be severable and that therefore the remaining provisions of the Act were valid and enforceable despite the invalidity of the forfeiture provisions. Thus, the constitutional questions were raised, considered and decided in the lowest Court. The matter was duly appealed to the Minnesota Supreme Court, which on January 29, 1979, entered its judgment affirming the lower Court's decision. Appellant's Petition for Re-Hearing was denied by the Minnesota Supreme Court on March 15, 1979. Notice of Appeal to the Supreme Court of the United States was filed with the Clerk of the Supreme Court of the State of Minnesota, on June 11, 1979. An extension of the time within which to file a Jurisdictional

Statement with this Court was granted through July 11, 1979.

The jurisdiction of the Supreme Court to hear this appeal rests upon 28 U.S.C. 1257 (2).

This appeal questions the constitutionality of Minnesota Laws of 1973, Chapter 650, Article XX. This Act involves the taxation of a fee simple interest in minerals, which interest is owned separately from the fee title to the surface of the property. The Act is set forth in its entirety in the Appendix hereto.

This appeal also involves the validity of the judgment of the Supreme Court of the State of Minnesota, that the uniformity clause of Constitutions of the State of Minnesota and of the Federal Government do not require that real property taxes be related to the value of the real property interest taxed. Article X, Section 1, of the Minnesota Constitution, reads as follows:

"§1. Power of taxation; exemptions; legislative powers

Section 1. The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this section. There may be exempted from taxation personal property not exceeding in value \$200.00 for each household, individual or head of a family, and household goods and farm machinery as

the legislature determines. The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning."

QUESTIONS

First, is the taxing statute, Chapter 650, Article XX, Laws of Minnesota, 1973, so arbitrary so as to compel the conclusion that it does not involve the exercise of the taxing power, but constitutes, in substance and effect, the direct exercise of a different and forbidden power, the confiscation of property?

Second, do the Constitutions of the United States and of the State of Minnesota, permit the Legislature of the State of Minnesota, to impose on real property, a flat minimum tax, unrelated to the value of that real property?

STATEMENT OF CASE

This action questions the constitutionality of Laws of 1973, Chapter 650, Article XX. That Act amended Minnesota's 1969 mineral registration act¹ which had required all persons who claimed ownership of a "fee simple interest in minerals . . . which is owned separately from the fee title to the surface of the property"² to file a statement

¹Laws of Minnesota, 1969, c. 829, coed as Minn. Stat. §§93.52-93.58.

²Id., §1. Hereinafter such interest will be referred to as "severed mineral interests" or "severed minerals."

describing that interest with the register of deeds or registrar of titles "in the county where the interest is located."

A severed mineral interest is a class of real property. The severance of the fee title to the minerals from the fee title to the surface of real property is common throughout Minnesota, but particularly in northern Minnesota, and affects the title to millions of acres of surface and mineral lands. Such severed mineral interests are not contrary to, but in harmony with, Minnesota public policy. *Buck vs. Walker*, 115 Minn. 239, 244, 132 NW 205, 207 (1911). The Appellant was one of the Plaintiffs who brought an action against the State of Minnesota, asking the Court to declare the registration, taxation and forfeiture provisions of the Act, unconstitutional.

The 1973 amendments added two important provisions which have now become the basis for Appellant's action. First, in order to ensure that filings would actually be made, the Legislature provided that anyone who failed to file within the statutory period would forfeit his severed mineral interests to the State. Laws of Minnesota, 1973, c. 650, Art. XX, §6, Minn. Stat. §93.55, (1976). Second, Sec. 3 of the Act (M.S.A. Sec. 273.13, Subd. 2a) imposes a tax of 25¢ per acre upon severed mineral interests, due and payable annually. The 25¢ per acre tax is prorated in the case of fractional interests (e.g. an undivided 3/8 of an acre), but the minimum annual tax on any mineral interest is \$2.00. All such interests are taxed at the same rate, regardless of their value. Therefore, a severed mineral interest relating to land located directly on the Mesabe iron formation, the richest source of iron ore in America, is taxed at the same rate as an interest relating to land located in southern Minnesota farmland. A severed mineral interest re-

lating to gold is taxed at the same rate as a severed mineral interest relating to sand. The Act imposes no similar tax on unsevered mineral interests.

The penalty for failure to comply with this registration requirement within the allotted time³ was immediate, complete and unconditional forfeiture of the interest to the State. The statute provided for no individual notice either the registration requirement or of the consequences resulting from the failure to comply with this requirement, even to owners of mineral interests whose identities were easily ascertainable from available records.⁴ The Act provided only for its publication in county newspapers and in two publications relating to mining activities which have nationwide circulation. M.S.A. Sec. 93.58. Further, unlike other forfeiture statutes previously enacted by the Legislature, this statute provided for no notice to an owner of the impending forfeiture of his interest, nor did it afford him any opportunity for hearing to contest the forfeiture.

Unlike the owners of other real property interests, the owner of a severed mineral interest has no right to contest the minimum tax by alleging a lower valuation. An owner is afforded no opportunity to correct a defect in his filing no matter how minor. Nor is he afforded any redemption privilege to recover a forfeited interest. His only remedy is to commence an action against the Commissioner of Nat-

³A statement was required to be filed before Jan. 1, 1975, as to any interests owned on or before Dec. 31, 1973, or within one year as to interests acquired subsequent to Dec. 31, 1973. Minnesota Statutes, Sec. 93.52, Subd. 2.

⁴The titles to severed mineral interest in thousands of acres, for example, are registered under the Torrens System. In such cases, the names and addresses of the registered owner are shown on the applicable title certificates registered in the office of the Registrar of Titles in the various counties. Even in such cases, the statute afforded no individual notice to the registered owners.

ural Resources not to recover his interest, but to attempt to prove and recover the lesser of the "fair market value" of his interest at the time of forfeiture or at the time of trial. M.S.A. Sec. 93.55. This remedy as a practical matter, is unavailable to most of the owners of severed minerals. To attempt to prove the fair market value of most interests would require extensive exploration activity, including drilling, drill core analysis, etc. Such an undertaking would require an expenditure of many thousands of dollars, certainly beyond the means of many owners and unjustified in the case of most mineral interests.

Severed mineral interests vary substantially in present market and in potential future value. Some of such interests have been extensively explored and are known to contain valuable mineral deposits, although the precise quantity and grade of such minerals may be undetermined. These interests have some potential future value. Other severed mineral interests, although less well explored, are located near areas which have been extensively explored and have been found to contain economic mineralization. Some of Appellant's interests, for example, lie on or near the Mesabi Iron Range, a known rich source of iron ore and taconite, or the Duluth Complex, a possible economic source of copper-nickel. These interests also have some potential future value, although less well defined. Other such interests, however, have not been subjected to exploration and are located far from any known source of economic mineralization. There is little or no evidence to indicate that the property to which these interests relate contains minerals. These interests have little or, at best, nominal value. Still others of Appellant's interests are located in inter-

mediate areas between these two extremes, and their values vary in infinite gradations in accordance with the favorability of their location and other factors.

There are startling variations in potential value of Appellant's severed mineral interests based upon testimony relating to such factors as purchase price, current market value, appraisal by a competent mineral value appraiser, and the State's own estimates of values of actual mineral deposits. The Appellant has paid from \$80.00 per acre to 1½¢ per acre for the ownership of severed mineral interests. One of the original Plaintiffs owns 32,000 acres of severed minerals, the total appraised value of which was \$2,800.00 (a value of 9¢ per acre) in 1956, and which has declined in value since. On the other hand, the State's witnesses established various estimates of valuable deposits of copper, nickel and iron ore in other areas where title to the minerals has been severed from title to the surface. It is clear that the value of severed mineral interests varies from negligible to great.

THE QUESTIONS ARE SUBSTANTIAL

Appellant alleges that Chapter 650, Article XX, Laws of Minnesota, 1973, is an attempt by the State of Minnesota to confiscate his, and many other persons', property. Severed mineral interest statements were filed, subsequent to the passage of the Act, in 79 of the 87 counties in Minnesota. These severed mineral interest statements related to interests claimed in approximately 2,782,367 acres. (A-161). The evidence indicates that there are some 5,000,000 to 11,000,000 acres of severed mineral interests upon which severed mineral interest statements have not been filed. Thus, the number of owners of severed mineral interests affected by this "tax" statute is very large.

A close examination of the statute itself, makes it clear that the Legislature knew the constitutional problems the statute faced. Nevertheless, the Legislature was intent on establishing a system where severed mineral interests would forfeit to the State. The statute alleges its purpose is to require severed mineral interests to bear a portion of the costs of government, but the statute first finds that untaxed severed minerals "are immune from tax forfeiture". That it is the transfer of mineral rights to the State by tax forfeiture which is the undelying scheme of the statute is born out by the fact that the statute fails to provide any method for the owner of severed mineral interests to recover or redeem his severed mineral interests once they are forfeited to the State.

The size of the tax per acre suggests that the State is not interested in the tax, but is intent upon acquiring the ownership of the severed minerals. The costs of collection will exceed the revenue in at least 28 counties where \$1.000 or less will be received annually.

Minnesota Statutes, Section 272.04 (A-12) was first passed as Chapter 161, Section 1, Laws of Minnesota, 1905. That statute provides that severed mineral interests may be assessed and taxed separately from the surface rights in real estate and may be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes. Thus for over 70 years severed mineral interests have been subject to taxation and subsequent tax forfeiture.

The fact that only 3,212 acres of severed minerals owned by the Plaintiffs who brought this action, in District Court of Ramsey County, Minnesota, were subject to any Ad Valorem tax, is a good indication that most sev-

ered mineral have, contrary to general belief, at best, nominal value. Except for a few mining companies and large corporations, the owners of severed mineral interests seldom have any specific knowledge of the value of their severed mineral interests. On the other hand, the State of Minnesota has, through its geologists in the Department of Natural Resources, and its tax reports in the Department of Revenue, considerable knowledge as to the potential value of severed minerals in Minnesota. The State has the authority and the knowledge to assess known and potential mineral properties, but has refused, in most cases, to do so. *A. Magnano Co. v. Hamilton*, 292 U.S. 40, 54 S. Ct. 597, 78 L.Ed. 1109 (1934); *Brushaber v. Union P.C. R.R.*, 240 U.S. 1, 24, 36 S. Ct. 236, 60 L.Ed. 493; *French v. Barber Asphalt Paving Co.*, 181 U.S. 324, 329, 21 S.Ct. 625, 45 L.Ed. 879; *Heiner v. Donan*, 285 U.S. 312, 326, 52 S.Ct. 358, 76 L.Ed. 772.

Your Appellant alleges that Article X, Section 1 of the Minnesota Constitution, supra, requires that all real property taxes be somehow related to the value of the real property interest taxed. The Supreme Court of the State of Minnesota found in the decision appealed from, that the Minnesota Constitution does not require that real property taxes be related to value. The standards of "equal protection of the law" and "uniformity of taxation" under the State Constitution are the same as the standard of equality required by the "equal protection of law" clause of the Fourteenth Amendment of the United States Constitution. *C. Thomas Stores Sales System v. Spaeth*, 1941, 209 Minn. 504, 297 NW 9. The Minnesota Supreme Court indicated that the prior Minnesota Constitutional Article IX, Section 1, which was amended in 1906, had required,

prior to amendment, that "all taxes to be raised in this State shall be as nearly as equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the State." The present Minnesota Constitution, Article X, Section 1, which replaced the former Article IX, Section 1, merely requires that "taxes shall be uniform upon the same class of subjects. . . ." The Minnesota Supreme Court refers to this amendment as the "wide-open tax amendment". Appellant believes that this is the first time that the Supreme Court of the State of Minnesota has unequivocally stated that real property taxes need not be related to the value of the real property taxed. Minnesota Statutes, Section 273.11, read in part as follows:

"All property shall be valued at its market value. In determining such value, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value, the price for which such property would sell at auction, or at a forced sale, or in aggregate with all the property in a town or district; but he shall value each article or description of property by itself and at a sum or price he believes same to be fairly worth in money In valuing real property upon which there is a mine or quarry, it shall be valued at such price as such property, including the mine or quarry, would sell for a fair, voluntary sale, for cash"

This statute, in its various forms, has required since its first enactment in 1878, that real property in Minnesota shall be valued at its market value. The statute existed prior to the 1906 amendment to Article IX, Section

1 of the Minnesota Constitutions. This statute stands with equal force and effect today. Appellant alleges that the so-called "wide-open tax amendment" was intended to permit the taxation, not only of real estate, but also of personal property, securities or privileges, and that taxes could be imposed upon the possessors of such intangible property. Referring to the mortgage registration tax, the Court said "the State may tax a species of property, which it calls a 'mortgage lien' as it may tax the right to succeed to an inheritance, and measure the amount of the tax by the money secured or inherited." *Mutual Benefit Life Insurance Company v. County of Martin*, 104 Minn. 179, 116 NW 572 (1908) The clear implication of this case which was decided shortly after the passage of the amendment to Article IX, Section 1, of the Minnesota Constitution in 1906, is that taxes are to be related to value.

The principle that taxes on real estate must be related to value is referred to in two Minnesota cases decided after the passage of the 1906 amendment to Article IX of the Minnesota Constitution. In a 1913 case, *Williams v. City of St. Paul*, 123 Minn. 1, 142 NW 866, the Minnesota Supreme Court held that due process was afforded an owner of real estate subject to taxation where the owner at some stage of tax process had an opportunity to question the validity and the amount of the tax. The mineral registration tax provides no means for an owner to question the amount of the tax. *In Re Delinquent taxes in Polk County*, 147 Minn. 344, 180 N.W. 240 (1920).

The value of severed mineral rights in Minnesota varies greatly. Your Appellant has paid from the equivalent of \$80.00 per acre for some small parcels, to as low as 1½¢

per acre for some 66,000 acres of severed mineral interest rights. With respect to the mineral rights having a present market value in the order of $1\frac{1}{2}\text{¢}$ per acre, the 25¢ per acre tax represent 1,600% of the present value of the unsevered mineral interest. The flat tax of 25¢ per acre, regardless of value, is equally ridiculous where severed mineral interests have a value of \$80.00 per acre.

If the Minnesota Supreme Court is correct in its interpretation of Article X, Section 1, of the Minnesota Constitution, namely that real property taxes need not be related to the value of the property taxed, then the Minnesota Legislature could put a flat tax on any property in the State of Minnesota, including homesteads. The State of Minnesota has called the flat 25¢ per acre a nominal tax. It is not a nominal tax when the value of the real estate interest taxed is $1\frac{1}{2}\text{¢}$. More important, however, is the principle represented by a flat tax, unrelated to real estate value. If the Minnesota Supreme Court is correct, the Legislature of the State of Minnesota has the power to destroy any interest in property in Minnesota, be it an easement, homestead or a severed mineral interest.

The Minnesota Supreme Court found that the forfeiture provisions of the mineral registration act violate the due process clause of the state and Federal constitutions because the notice provisions are inadequate and because an owner of a severed mineral interest who fails to comply with the registration requirement is denied an opportunity for a hearing before the forfeiture occurs. The legislature cannot deprive a person of his day in court to vindicate his rights. However, a flat tax, regardless of value, renders any hearing meaningless. The law which closes a

person's mouth absolutely when he comes into court is the same, in effect, as the law which deprives him of his day in court. *Juster bros. Inc. v. Christgau*, 214 Minn. 108, 117; 7 N.W. (2nd) 501 (1943).

DATED this 29th day of June, 1979, at Duluth, Minnesota.

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APPENDIX

STATE OF MINNESOTA
County of Ramsey

DISTRICT COURT
Second Judicial District

ALLISON CONTOS, DANIEL S. CASH, BARBARA JOHNSON, ALWORTH LAND AND IMPROVEMENT COMPANY, BURLINGTON NORTHERN, INC., CLOQUET LUMBER COMPANY, DOROTHY M. CROSBY, Individually, and as Executrix of the Estate of JOHN Q. A. CROSBY, DAY DEVELOPMENT COMPANY, JAMES T. M. PREST, UNITED STATES STEEL CORP., ST CROIX LUMBER COMPANY, TORINUS COMPANY, FIRST NATIONAL BANK OF MINNEAPOLIS, as Trustee under various instruments of trust, NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, BOISE CASCADE CORPORATION, DR. ERNEST A. GOFF, JR., and PAUL M. ANDRESEN,

Plaintiffs,

vs.

ROBERT L. HERBST, Individually, and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, Individually, and as Auditor for St. Louis County; the STATE OF MINNESOTA; JAMES R. HELTZER, as Commissioner of the Minnesota Department of Economic Development; ARTHUR C. ROEMER, as Commissioner of the Minnesota Department of Revenue; and the MINNESOTA CHIPPEWA TRIBE,

Defendants.

AMENDED COMPLAINT

The plaintiffs, for their Amended Complaint against the defendants herein, state and allege as follows:

I.

That this is an action brought pursuant to Minnesota Statutes 555.01 - 555.16 seeking a declaration adjudging that Article XX of Ch. 650, Laws of Minnesota 1973 (copy attached as Exhibit A) is invalid on the grounds set forth herein, and seeking a permanent injunction prohibiting the defendants from in any way implementing or enforcing the provisions of the Act.

II.

That Article XX of Ch. 650, Laws of Minnesota 1973 (hereinafter referred to as "the Act") imposes a tax of twenty-five cents (25¢) per acre on an interest in any minerals owned separately and apart from the fee title to the surface of real property, due and payable annually, and imposes a minimum tax of Two Dollars (\$2.00) payable annually with respect to any mineral interest; that the Act requires additionally that every owner of a fee simple interest in minerals file for record in the office of the Register of Deeds, or, if the interest in minerals is registered property, in the office of the Registrar of Titles in the county in which the mineral interest is located, a verified statement including his name, his address, interest in minerals a legal description of the property, together with the book and page number or document number of the

instrument by which the mineral interest was created or acquired; that the Act further provides that in the event the owner fails to file such a statement before January 1, 1975 as to any interest owned on or before December 31, 1973, or within one year after acquiring such an interest as to interests acquired after December 31, 1973, the interest forfeits to the State of Minnesota.

III.

That the plaintiffs are all owners of several mineral interests coming under the purview of the Act and located within the County of St. Louis. Plaintiffs' rights, status and other legal relations are adversely affected by said Act.

IV.

That the defendant Robert L. Herbst, Commissioner of the Minnesota Department of Natural Resources, is charged pursuant to Minnesota Statute Section 84.027, Subdivision 2, with control of all public lands, including minerals, and is permitted, pursuant to Section 6 of the Act, to lease mineral interests forfeited to the state under the provisions of the Act.

V.

That Andrew Korda, Auditor of St. Louis County, is a public officer with whom copies of the verified statements are to be filed by the Register of Deeds and Registrar of Titles, and is charged with responsibility of implementing the tax imposed by the Act.

VI.

That the State of Minnesota, under the terms of said Act, upon failure of the owner of a severed mineral interest to file a registration statement in conformity with the Act, will claim a right, title, or interest in or to such severed mineral interest.

VII.

That Section 2 of said Act (amending Minnesota Statute 272.04, Subdivision 1) which permits the imposition of a tax on severed mineral rights such as that provided for in Section 3 of the Act is illegal and unconstitutional in the following respects;

- A. It violates the Uniformity requirements of Minnesota Constitution Article IX, Section 1. Said Uniformity Clause does not permit taxation of any class of property on a basis which is not in some reasonable way related to value.
- B. It violates the Equal Protection Clause of the United States Constitution, Amendment XIV, Section 1.
- C. It is class or special legislation forbidden by Minnesota Constitution Article I, Section 2 and Article IV, Section 33 as well as by United States Constitution, Amendment XIV, Section 1. The Act selects particular individuals from a class and imposes on them special burdens from which others of the same class are exempt.

- D. The classification is based solely on ownership which thus amounts to an arbitrary and illegal classification of "persons" rather than "property" for taxation.
- E. The classification is illegal and arbitrary as well as discriminatory in failing to assess and tax unsevered mineral interests on the same basis as severed mineral interests. Thus if the surface owner also owns the mineral interests he is exempt from said tax.
- F. It violates Minnesota Statute 273.11 requiring that "all property shall be valued at its market value".

VIII.

The tax imposed under Section 3 of the Act (amending Minnesota Statute 273.13 by adding Subdivision 2a. Class 1b) is constitutionally infirm in the following respects:

- A. Denomination of severed mineral interests as a classification for the purposes of taxation is illegal for the reasons stated in paragraph VII of this Complaint.
- B. Imposition of a flat rate per acre tax and a minimum annual tax of \$2.00 without regard to the kind, quality, quantity, value or existence of the mineral interest being taxed is illegal in violation of the due process requirements of Minnesota Constitution, Article I, Section 7 and United States Constitution Amendment XIV, Section 1, as well as the Uniformity requirements of Minnesota Con-

stitution, Article IX, Section 1, and the Equal Protection Clause of United States Constitution Amendment XIV, Section 1. The Act does not provide for any demonstrable relation between the amount of the tax and the value of the interest subject to the tax.

- C. That portion of Section 3 of the Act providing for a minimum annual tax of \$2.00 with respect to any mineral interest is so vague and indefinite as to offend due process in violation of the due process requirements of Minnesota Constitution, Article I, Section 7, and United States Constitution Amendment XIV, Section 1.

IX.

That Section 5 of the Act (amending Minnesota Statute 93.52, Subdivision 2) which sets forth the information required to be included in the verified statement, is so vague and indefinite that the plaintiffs as well as other owners of severed mineral interests cannot determine in good faith the proper manner in which to comply with the requirements of the Act with respect to the registration of many mineral interests, and therefore the plaintiffs stand in jeopardy of being deprived of these interests without due process of law in violation of Minnesota Constitution Article I, Section 7, and United States Constitution Amendment XIV, Section 1.

X.

That Section 6 of the Act (amending Minnesota Statute 93.55) providing for forfeiture of a mineral interest in

the event of a failure to file is violative of Minnesota Constitution, Article I, Section 7, and United States Constitution Amendment XIV, Section 1, which prohibits deprivation of property without due process of law, in the following respects:

- A. The Act makes no meaningful provision for notice either of the registration requirement or of impending forfeiture.
- B. The Act makes no provision for a hearing on or judicial determination of the validity of the forfeiture.
- C. Due process requires notice before judgment and an opportunity to be heard in an orderly proceeding adapted to the nature of the case.

XI.

That Section 6 of the Act, providing for forfeiture of a mineral interest in the event of a failure to file, constitutes a taking of private property without just compensation, and is therefore violative of Minnesota Constitution, Article I, Section 13, and United States Constitution, Amendment V.

XII.

That Section 6 of the Act, providing for forfeiture of a mineral interest in the event of a failure to file, operates to destroy vested property interests acquired by legally binding contract by subsequently enacted legislation, and therefore constitutes an impairment of contract in viola-

tion of Minnesota Constitution, Article I, Section 11, and United States Constitution, Article I, Section 10.

XIII.

The implementation and enforcement of the Act will violate presently existing vested rights; the Act contravenes long established usage and accepted practice.

XIV.

That in view of the objections raised with respect to the Act as set forth herein, the Act is invalid in its entirety, there being no valid provision of the Statute which can be given force and effect without the invalid provisions.

XV.

That in view of the fact that it is the intention of the defendants to enforce the provisions of the Act, and in further view of the objections raised with respect to the Act as set forth herein, there is a justiciable controversy as to the validity of the Act and its force and effect upon the plaintiffs. Plaintiffs are entitled to a declaration of their rights with respect to the invalidity of said Act.

XVI.

Section 6 of said Act (amending Minnesota Statute 93.55) provides for forfeiture as to any owner of a severed mineral interest who fails to file the verified statement contemplated by the Act prior to January 1, 1975 with respect to any interests owned on or before December 31, 1973 or within one year after acquiring such interests as

to interests acquired after December 31, 1973. In order for plaintiffs to secure a meaningful declaration of their rights it is essential that such determination be made prior to January 1, 1975 in order to avoid forfeiture. The preservation of plaintiffs' rights therefore depend upon the maintenance of the status quo, i.e., no forfeiture prior to judicial determination of the validity of the complaints here raised.

XVII.

That if the Court should find the Act invalid on the grounds set forth herein, and if the defendants are not enjoined from enforcing and implementing the provisions of the Act, the plaintiffs stand in danger of suffering real, substantial and irreparable harm for which there is no adequate remedy at law.

WHEREFORE, plaintiffs pray that the Court adjudge as follows:

1. That the Act is invalid in its entirety on the grounds set forth herein.
2. That the defendants be permanently enjoined from enforcing and implementing the Act and from exercising control or dominion over the severed mineral interests of the plaintiffs under the Act.
3. That the State of Minnesota be permanently enjoined from claiming any right, interest or title in or to any severed mineral interests by reason of the failure of any owner of severed mineral rights to register same in conformity with the requirements of the Act.

4. For such other and further relief as appears to the Court to be proper, together with costs and disbursements herein.

HANFT, FRIDE, O'BRIEN & HARRIES

By TYRONE P. BUJOLD

By EDWARD T. FRIDE

By PAUL J. LOKKEN

Attorneys for Plaintiffs

1200 Alworth Building

Duluth, Minnesota 55802

218/722/4766

“Exhibit A”

ARTICLE XX

Section 1, Minnesota Statutes 1971, Chapter 272, is amended by adding a section to read:

[272.039] **LEGISLATIVE FINDINGS AND CONCLUSIONS RELATED TO THE TAXATION OF MINERALS OWNED SEPARATELY FROM THE SURFACE.** The legislature finds, for the reasons stated below, that a class of real property has been created which, although not exempt from taxation, is not assessed for tax purposes and does not, therefore, contribute anything toward the cost of supporting the governments which protect and preserve the continued existence of the property. These reasons are as follows: (1) In the case of *Washburn v. Gregory*, 1914, 125 Minn. 491, 147 N.W. 706, the Minnesota Supreme Court determined that where mineral in-

terests are owned separately from the surface interests in real estate, the mineral interest is a separate interest in land, separately taxable, and does not forfeit if the overlying surface interest forfeits for nonpayment of taxes due on the surface interest; (2) Since the 1914 decision, mineral interests owned separately from the surface have been valued and assessed for tax purposes, as a practical matter, only if the value of the minerals has been determined through drilling and drill core analysis; and (3) The absence of any taxation of mineral interests owned separately from the surface, except where drilling analysis is available, has encouraged the separation of ownership of surface and mineral estates and resulted in the creation of hundreds of thousands of acres of untaxed mineral estate lands which thus are immune from tax forfeiture. The legislature also finds that the province of Ontario in Canada, which has land ownership patterns and mineral characteristics similar to that of Minnesota, has imposed a tax of \$.50 an acre on minerals owned separately from the surface since 1968, and \$.10 an acre before that. The legislature further finds that the identification of separately owned mineral interests by taxing authorities requires title searches which are extremely burdensome and, where no public tract index is available, prohibitively expensive. This result is caused in part by the decision in *Wichelman v. Messner*, 1957, 250 Minn. 88, 83 N.W. (2d) 800, where the so called “40 year law” was held inapplicable to mineral interests owned separately from surface interests. On the basis of the above findings, and for the purpose of requiring mineral interests owned separately from surface interests to contribute to the cost of

government at a time when other interests in real property are heavily burdened with real property taxes, the legislature concludes that the taxation of severed mineral interests as provided in section 3 of this article is necessary and in the public interest, and provides fair taxation of a class of real property which has escaped taxation for many years. The legislature further concludes that such a tax is not prohibited by Minnesota Constitution, Article 18. The legislature concludes finally that the amendments and repeals made by this act to Minnesota Statutes, Sections 93.52 to 93.58, are necessary to provide adequate identification of mineral interests owned separately from the surface and to prevent the continued escape from taxation of obscure and fractionalized severed mineral interests.

Sec. 2. Minnesota Statutes 1971, Section 272.04, Subdivision 1, is amended to read:

272.04 MINERAL, GAS, COAL, AND OIL OWNED APART FROM LAND; SPACE ABOVE AND BELOW SURFACE, Subdivision 1. When any mineral, gas, coal, oil, or other similar interests in real estate are owned separately and apart from and independently of the rights and interests owned in the surface of such real estate, such mineral, gas, coal, oil, or other similar interests may be assessed and taxed separately from such surface rights and interests in such real estate, including but not limited to the taxation provided in section 3 of this act, and may be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes.

Sec. 3. Minnesota Statutes 1971, Section 273.13, is amended by adding a subdivision to read:

Subd. 2a. CLASS 1d. "Mineral interest," for the purpose of this subdivision, means an interest in any minerals, including but not limited to gas, coal, or other similar interest in real estate, which is owned separately and apart from the fee title to the surface of such real property. Mineral interests which are filed for record in the offices of either the register of deeds or registrar of titles pursuant to Minnesota Statutes, Sections 93.52 to 93.58, constitute class 1b, and shall be taxed as provided in this subdivision unless specifically excluded by this subdivision. A tax of \$.25 per acre or portion of any acre of mineral interest is hereby imposed and is due and payable annually. If an interest filed pursuant to sections 93.52 to 93.58 is a fractional undivided interest in an area the tax due on the interest per acre or portion of an acre is equal to the product obtained by multiplying the fractional interest times \$.25, computed to the nearest cent. However, the minimum annual tax on any mineral interest is \$2. No such tax on mineral interests is due and payable on the following: (a) Mineral interests valued and taxed under other laws relating to the taxation of minerals, gas, coal, oil, or other similar interests; (b) Mineral interests which are exempt from taxation pursuant to constitutional or related statutory provisions. Tax money received under this subdivision shall be apportioned to the taxing districts included in the area taxed in the same proportion as the surface interest mill rate of a taxing district bears to the total mill rate applicable to surface interests in the area taxed. The tax imposed by this subdivision is not included within any limitations as to rate or amount of taxes which may be imposed in an area to which the tax imposed by

this subdivision applies. The tax imposed by this subdivision shall not cause the amount of other taxes levied or to be levied in the area, which are subject to any such limitation, to be reduced in any amount whatsoever. The tax imposed by this section is effective for taxing years beginning January 1, 1975. Twenty percent of the revenues received from the tax imposed by this section shall be distributed under the provisions of section 4.

Sec. 4 [362.40] LOANS TO INDIANS LIVING ON AND OFF RESERVATION. Subdivision 1. For purposes of this section the following terms shall have the meanings ascribed to them herein.

Subd. 2. "Indian" means a person of one-quarter or more Indian blood.

Subd. 3. "Census" means the most recent census taken by the Minnesota department of manpower services.

Subd. 4. "Reservation residents" means Indians living on reservations at the time of the census.

Subd. 5. "Nonreservation residents" means Indians living off reservations in Minnesota at the time of the census, and who are enrolled members of a Minnesota-based tribe or band.

Subd. 6. "Person" means an individual Indian, or a partnership comprising Indians only, or a corporation whose stock is owned wholly by Indians.

Subd. 7. "Tribal council" means the reservation business committee or equivalent duly constituted tribal authority.

Subd. 8. The remaining 20 percent of the tax revenue received by the county auditor under section 3 shall be remitted by the county auditor to the state treasurer and shall be deposited in the general fund in special accounts identified as "reservation residents loan accounts" and a "nonreservation residents loan account." The amount to be credited to each reservation residents loan account shall be that percentage of the amount received from all the counties pursuant to subdivision 8 as the number of Indians living on such reservation bears to all the Indians in Minnesota, according to the census. The amount remaining shall be credited to the nonreservation residents loan account. The amounts credited to each of these special accounts shall be used solely for making loans to Indians, in the manner provided by subdivisions 9 and 10.

Subd. 9. A reservation resident, desiring to make a loan for the purpose of starting a business enterprise or expanding a going business, shall make application to the state department of economic development. The department shall prescribe the necessary forms, and advise the prospective borrower as to the condition under which his application may be expected to receive favorable consideration. Thereafter the application shall be forwarded to the tribal council, which is empowered either to approve or reject the application. If the application is approved, the tribal council shall forward the application, together with all relevant documents pertinent thereto, to the state auditor, who shall draw his warrant in favor of the tribal council with appropriate notations identifying the borrower. The tribal council shall thereafter reimburse suppliers

and vendors for purchases of equipment, real estate, and inventory made by the borrower pursuant in the conditions or guidelines established by the state department of economic development. The tribal council shall maintain records of transactions for each borrower in a manner consistent with good accounting practice. Simple interest at two percent of the amount of the debt owed shall be charged. When any portion of a debt is repaid, the tribal council shall remit the amount so received plus interest paid thereon to the state treasurer. The amount so received shall be credited to such reservation residents loan account. The tribal council shall secure a bond from a surety company, in favor of the state treasurer, in an amount equal to the maximum amount to the credit of such reservation residents loan account during the fiscal year. Ten percent of the total amount made available to any tribal council during the fiscal year shall be paid to such council prior to December 31 for the purpose of financing administrative costs.

Subd. 10. A nonreservation resident desiring to make a loan for the purpose of starting a business enterprise or expanding a going business shall make application to the state department of economic development, on forms prescribed by the department. The department is empowered to either accept or reject the application, based upon guidelines and conditions essentially similar to those used for the purpose of recommending approval or rejection of reservation residents by the tribal council under subdivision 9 of this section. If the application is approved by the state department of economic development, the department shall forward the application, together with all

the relevant documents pertinent thereto, to the state auditor, who shall draw his warrant in favor of the commissioner of economic development, with appropriate notations identifying the borrower. The department of economic development shall thereafter reimburse suppliers and vendors for purchases of equipment, real estate and inventory made by the borrower pursuant to the conditions or guidelines established by the department. The department of economic development shall maintain records of transactions for each borrower in a manner consistent with good accounting practice. Simple interest at two percent shall be charged. When any portion of a debt is repaid, the department of economic development shall remit the amount so received plus interest paid thereon to the state treasurer. The amount so received shall be credited to the nonreservation residents loan account.

Subd. 11. Loans made under subdivisions 9 and 10 shall be limited to a period of 20 years, if made for the purpose of financing nonreal estate purchases. Loans made for the purpose of financing real estate purchases, where such real property is to be used for nonresidential purposes only, shall be limited to a period of 40 years, and shall be a lien on the real property so acquired.

Subd. 12. Any person misrepresenting facts regarding the Indian ancestry of a prospective borrower for the purpose of securing a loan under subdivisions 9 and 10, whether such borrower be an individual, partnership or corporation, shall be guilty of a gross misdemeanor.

Subd. 13. The county auditor shall remit the tax revenue received yearly to the state treasurer as required by subdivision 8 no later than December 15.

Subd. 14. There is appropriated annually an amount equal to the tax revenue allotted under subdivisions 9 and 10.

Sec. 5. Minnesota Statutes 1971, Section 93.52, Subdivision 2, is amended to read:

Subd. 2. Except as provided in subdivision 3, from and after January 1, 1970, every owner of a fee simple interest in minerals hereafter referred to as a mineral interest, in lands in this state, which interest is owned separately from the fee title to the surface of the property upon or beneath which the mineral interest exists, shall file for record in the register of deeds office or, if registered properly, in the registrar of titles office in the county where the mineral interest is located a verified statement citing sections 93.52 to 93.58 and setting forth his address, his interest in the minerals, and either both (1) the legal description of the property upon or beneath which the interest exists, or and (2) the book and page number or the document number, in the records of the register of deeds or registrar of titles, of the instrument by which the mineral interest is created or acquired. Every five years thereafter the owner, or his successor in interest shall renew the filing of a verified statement which shall contain the information as above required. No statement may be filed for record which contains mineral interests from more than one government section unless the instrument by which the mineral interest is created or acquired includes mineral

interests from more than one government section. The register of deeds and registrar of titles shall file with the county auditor a copy of each document so recorded within 60 days after recording in the office of register of deeds or registrar of titles.

3.55 FAILURE TO FILE OR RE-FILE. If the owner of a mineral interest fails to file the verified statement required by section 93.52, before January 1, 1975, as to any interests owned on or before September 30, 1974 December 31, 1973, or within 90 days one year after acquiring such interests as to interests acquired after September 30, 1974 December 31, 1973, and not previously filed under section 93.52 or if the owner fails to re-file such verified statement within five years after the last filing, the mineral may be leased by the commissioner of natural resources as agent for the owner, his successor, and assigns, in the manner provided hereafter interest shall forfeit to the state. The owner's failure to file the verified statement is deemed consent by the owner to such leasing. Thereafter the mineral interest may be leased in the same manner as provided in Minnesota Statutes, Section 93.335, for the lease of minerals and mineral rights becoming the absolute property of the state under the tax laws, except that no permit or lease issued pursuant to this section shall afford the permittee or lessee any of the rights of condemnation provided in section 93.05, as to overlying surface interests. After the mineral interest has forfeited to the state pursuant to this section, a person claiming an ownership interest before the forfeiture may recover the fair market value of the interest only in the following manner. An action must be commenced within six years after the for-

feiture under this section to determine the ownership and the fair market value of the mineral interests in the property both at the time of forfeiture and at the time of bringing the action. The action shall be brought in the manner provided in Minnesota Statutes, Chapter 559, for an action to determine adverse claims, to the extent applicable. The person bringing the action shall serve notice of the action on the commissioner of natural resources in the same manner as is provided for service of notice of the action on a defendant. The commissioner may appear and contest the allegations of ownership and value in the same manner as a defendant in such actions. Persons determined by the court to be owners of the interests at the time of forfeiture to the state under this section may present to the state auditor a verified claim for refund of the fair market value of the interest. A copy of the court's decree shall be attached to the claim. Thereupon the state auditor shall refund to the claimant the fair market value at the time of forfeiture or at the time of bringing the action, whichever is lesser, less any taxes, penalties, costs, and interest which could have been collected during the period following the forfeiture under this section, had the interest in minerals been valued and assessed for tax purposes at the time of forfeiture under this section. There is appropriated from the general fund to the persons entitled to a refund an amount sufficient to pay the refund. The forfeiture provisions of this section do not apply to mineral interests valued and taxed under other laws relating to the taxation of minerals, gas, coal, oil, or other similar interests, so long as a tax is imposed and no forfeiture under the tax laws is complete. However, if the mineral interest

is valued under other tax laws, but no tax is imposed, the mineral interest forfeits under this section if not filed as required by this section.

Sec. 7. Minnesota Statutes 1971, Section 93.58, is amended to read:

93.58 PUBLICATION OF ACT. Sections 93.52 to 93.58, as amended or repealed by this article, together with the other sections of this 1973 article, shall be published once during the first week of each month in a legal newspaper in each county in the months of October, November, and December of the year 1969 1973 by the commissioner of natural resources at county expense. Sections 93.52 and 93.58 also shall be published by the commissioner of natural resources at least once in 1969 1973 in two publications related to mining activities which have nationwide circulation. Failure to publish as herein provided shall not affect the validity of sections 93.52 to 93.58 or the other sections of this article.

Sec. 8. SEVERABILITY. If any provision of sections 1 through 7 of this article or the application thereof to any person, agency, department or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of sections 1 through 7 are severable.

Sec. 9. REPEALER. Minnesota Statutes 1971, Sections 93.53, 93.54, 93.56, and 93.57 are repealed.

Sec. 10. EFFECTIVE DATE. Except for section 7, which is effective upon final enactment, this article is effective as of January 1, 1971. As soon as possible after

final enactment but before the effective date of the article the register of deeds and registrar of titles in each county shall file with the county auditor a copy of each document recorded pursuant to Minnesota Statutes, Sections 93.52 to 93.58, before the effective date of this article.
Changes or additions indicated by underline, deletions by strikeout.

STATE OF MINNESOTA DISTRICT COURT
County of St. Louis Sixth Judicial District

ALLISON CONTOS, DANIEL S. CASH, BARBARA JOHNSON, ALWORTH LAND AND IMPROVEMENT COMPANY, BURLINGTON NORTHERN, INC., CLOQUET LUMBER COMPANY, DOROTHY M. CROSBY, Individually, and as Executrix of the Estate of JOHN Q. A. CROSBY, DAY DEVELOPMENT COMPANY, JAMES T. M. PREST, UNITED STATES STEEL CORP., ST. CROIX LUMBER COMPANY, TORINUS COMPANY, and FIRST NATIONAL BANK OF MINNEAPOLIS, as Trustee under various instruments of trust,

Plaintiffs,

vs.

ROBERT L. HERBST, Individually, and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, Individually, and as Auditor for St. Louis County; and THE STATE OF MINNESOTA,

Defendants.

ANSWER OF DEFENDANTS STATE OF MINNESOTA AND ROBERT L. HERBST

Defendants State of Minnesota and Robert L. Herbst for their Answer to Plaintiffs' Complaint allege:

1. As to paragraph I of plaintiffs' Complaint, defendants admit that the Court has jurisdiction over this action by virtue of Minn. Stat. §555.01 (1971). Defendants deny that Laws 1973, Chapter 650, Article XX, is invalid for any reason and therefore, also deny that plaintiffs are entitled to an injunction.

2. As to paragraph II of plaintiffs' Complaint, defendants admit that Laws of Minnesota 1973, Chapter 650, Article XX, Section 2, imposes a tax of twenty-five cents (\$.25) per acre or portion thereof on interests in minerals, or other similar interests in real estate, which are owned separately and apart from the fee title to the surface of such real property. Defendants also admit that the minimum tax on any such interest is \$2.00. Defendants further admit that since January 1, 1970, every owner of a fee simple interest in minerals has been required by Minn. Stat. §93.52 to file a statement of the same in the county where it is located; that pursuant to laws of Minnesota 1973, Chapter 650, Article XX, Section 6, interests owned on or before December 31, 1973, and for which statements have not been previously filed will forfeit to the state by operation of law if the required statement is not filed by January 1, 1975; that as to such interests acquired subsequent to December 31, 1973, such forfeiture will occur if the statement is not filed within one year after acquisition.

3. As to paragraph III of plaintiffs' Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore, put plaintiffs to their proof of the same, except that defendants deny that plaintiffs' rights, status and other legal relations are adversely affected by said act.

4. As to paragraph IV, defendants admit that defendant Robert L. Herbst is the Commissioner of the Minnesota Department of Natural Resources and according to Minn. Stat. §84.027, subdivision 2 (1971) has "charge and control of all public lands, parks, timber, waters, minerals and wild animals of the state and of the use, sale, leasing, or other disposition thereof"; and that pursuant to Laws of Minnesota 1973, Chapter 650, Article XX, Section 6, he has the discretion to lease forfeited mineral interests in the same manner as he leases such interests as forfeit to the state for non-payment of taxes.

5. As to paragraph V of plaintiffs' Complaint, defendants admit that under Laws of Minnesota 1969, Chapter 829, Section 1, as amended by Laws of Minnesota 1973, Chapter 650, Article XX, Section 5, the County Auditor receives a copy of each statement of ownership of a severed mineral interest filed with the Register of Deeds or Registrar of Titles, and that the County Auditor is required to perform certain ministerial duties in regard to the administration of the 25 cent per acre tax on such interests.

6. As to paragraph VI of plaintiffs' Complaint, defendants admit that failure to file the statement as to se-

vered mineral interests within the specified time results in forfeiture of such interests to the State of Minnesota by operation of law.

7. As to paragraphs VII and VIII of plaintiffs' Complaint, defendants deny that the tax imposed by Laws of Minnesota 1973, Chapter 650, Article XX, Sections 2 and 3, is either illegal or unconstitutional in any respect. Defendants allege that such tax is, as stated in Laws of Minnesota 1973, Chapter 650, Article XX, Section 1 (Minn. Stat. Section 272.039), a tax on a class of property which has escaped taxation for years for the reasons set forth in said Section 1. Defendants further allege that the tax imposed by Article XX of Chapter 650 is uniform within the class of property taxed, i.e. severed mineral interests not otherwise taxed or otherwise exempt from taxation.

8. As to paragraph IX of plaintiffs' Complaint, defendants deny that any portion of Laws of Minnesota 1969, Chapter 829, Section 1, as amended by Laws of Minnesota 1973, Chapter 650, Article XX, Section 5, as it relates to the information to be included in the verified statement is unconstitutionally vague or indefinite. Defendants allege that such information is specified with sufficient certainty so as to render the provisions capable of rational, consistent execution and enforcement and in no way deprives plaintiffs of any property interests without due process of law.

9. As to paragraph X of plaintiffs' Complaint, defendants deny that either the Due Process Clauses of the United States Constitution, Amendment XIV, Section 1,

or the Minnesota Constitution, Article I, Section 7, requires notice or an opportunity for hearing prior to the forfeiture of a severed mineral interest for failure to file the required statement within the period allowed. Defendants allege that plaintiffs' rights are amply protected by filing the required statement within the period provided, which is in no event less than one year, and, failing this, by the right to recover the fair market value of any forfeited interest by following the procedures set forth in Section 6 of Article XX, (Minn. Stat. Section 93.55, 1973 Supplement). Furthermore, defendants allege that the legislature provided for unprecedented notice of the requirements of Laws of Minnesota 1969, Chapter 829, as amended by Laws of Minnesota 1973, Chapter 650, Article XX, by requiring the Commissioner of Natural Resources not only to publish the 1969 Act three times in each county and once in each of two mining publications of nationwide circulation, but also to repeat such publication after the passage of the 1973 amendments.

10. As to paragraphs XI and XII of plaintiffs' Complaint, defendants deny the repetitious allegations contained therein.

11. As to paragraph XIII of plaintiffs' Complaint, defendants admit that the Commissioners of Natural Resources, Revenue, and Economic Development intend to carry out their duties and responsibilities under the act and further that a justiciable controversy exists herein.

12. As to paragraph XIV of plaintiffs' Complaint, defendants deny that there is any need for hasty and pre-

cipitous action by the Court in this matter and allege that there is no way that issues raised at this late date by the plaintiffs will be resolved by the Supreme Court before January 1, 1975, absent a contrary time schedule from the Supreme Court which plaintiffs have yet to disclose to defendants. Defendants allege that the plaintiffs had full notice of substantially all of the registration provisions complained of on May 27, 1969, the date of enactment of Laws of Minnesota 1969, Chapter 829. Defendants further allege that the taxation and forfeiture provisions were known to plaintiffs as early as March, 1973, yet in all matters they failed to act until October, 1974. Defendants allege, therefore, that any urgency in this matter has been created by plaintiffs themselves who should not be permitted to benefit thereby.

13. As to paragraph XV of plaintiffs' Complaint, defendants deny that plaintiffs lack an adequate remedy at law. Defendants allege that a remedy is specifically and expressly provided for the situation where an interest in severed minerals forfeits for failure to file by Laws of Minnesota, Chapter 650, Article XX, Section 6. This law permits persons who have allowed their interests to forfeit for failure to file to recover the market value of the interest by bringing an action in the manner provided by Minn. Stat. Chapter 559, for an action to determine adverse claims. So far as the tax is concerned, defendants allege that additional adequate remedies at law exist and are available to plaintiffs.

14. Except as herein otherwise admitted or alleged, defendants deny each and every allegation contained in plaintiffs' Complaint.

SEPARATE DEFENSES

1. Plaintiffs have failed to join as parties to this action the following parties who are needed for a just adjudication herein within the meaning of Minnesota Rule of Civil Procedure No. 19:

(a) Arthur C. Roemer, Minnesota Commissioner of Revenue;

(b) James R. Heltzer, Minnesota Commissioner of Economic Development; and

(c) The Minnesota Chippewa Tribe and the Minnesota Chippewa Tribe, Inc.

Commissioners Roemer and Heltzer formally requested to be joined as parties at the hearing of October 9, 1974. The Minnesota Chippewa Tribe and the Minnesota Chippewa Tribe, Inc., have by official vote of their governing body, directed their attorney to intervene in the case.

WHEREFORE, defendants ask for the following relief:

1. That the Court order the joinder of Arthur C. Roemer, Commissioner of Revenue; James R. Heltzer, Commissioner of Economic Development; the Minnesota Chippewa Tribe and the Minnesota Chippewa Tribe, Inc., as party defendants;

2. That the Court declare Laws of Minnesota 1969, Chapter 829, as amended by Laws of Minnesota 1973, Chapter 650, Article XX, to be valid in its entirety;

3. That defendants receive their costs and disbursements herein; and

4. That defendants have such other and further relief as the Court may deem proper.

DATED: October 22, 1974.

WARREN SPANNAUS

Attorney General

C. PAUL FARACI

Deputy Attorney General

/s/ PHILLIP J. OLFELT

Assistant Attorney General

/s/ STEVEN G. THORNE

Special Assistant Attorney General

Attorneys for Defendants

375 Centennial Building

Saint Paul, Minnesota 55155

(612) 296-3294

(Title of Cause.)

ANSWER OF DEFENDANT ST. LOUIS COUNTY

Defendant County of St. Louis for its Answer to Plaintiffs' Complaint alleges:

1. As to paragraph I of plaintiffs' Complaint, defendant admits that the Court has jurisdiction over this action by virtue of Minn. Stat. §555.01 (1971). Defendant denies that Laws 1973, Chapter 650, Article XX, is invalid for any reason and therefore, also denies that plaintiffs are entitled to an injunction.

2. As to paragraph II of plaintiffs' Complaint, defendant admits that Laws of Minnesota 1973, Chapter 650, Article XX, Section 2, imposes a tax of twenty-five cents (\$.25) per acre or portion thereof on interests in minerals, or other similar interests in real estate, which are owned separately and apart from the fee title to the surface of such real property. Defendants also admit that the minimum tax on any such interest is \$2.00. Defendant further admits that since January 1, 1970, every owner of a fee simple interest in minerals has been required by Minn. Stat. §93.52 to file a statement of the same in the county where it is located; that pursuant to Laws of Minnesota 1973, Chapter 650, Article XX, Section 6, interests owned on or before December 31, 1973, and for which statements have not been previously filed will forfeit to the state by operation of law if the required statement is not filed by January 1, 1975; that as to such interests acquired subsequent to December 31, 1973, such forfeiture will occur if the statement is not filed within one year after acquisition.

3. As to paragraph III of plaintiffs' Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore, put plaintiffs to their proof of the same, except that defendant denies that plaintiffs' rights, status and other legal relations are adversely affected by said act.

4. As to paragraph IV, defendant admits that defendant Robert L. Herbst is the Commissioner of the Minnesota Department of Natural Resources and according to Minn. Stat. §84.027, subdivision 2 (1971) has "charge and control of all public lands, parks, timber, waters, minerals, and wild animals of the state and of the use, sale, leasing, or other disposition thereof"; and that pursuant to Laws of Minnesota 1973, Chapter 650, Article XX, Section 6, he has the discretion to lease forfeited mineral interests in the same manner as he leases such interests as forfeit to the state for non-payment of taxes.

5. As to paragraph V of plaintiffs' Complaint, defendant admits that under Laws of Minnesota 1969, Chapter 829, Section 1, as amended by Laws of Minnesota 1973, Chapter 650, Article XX, Section 5, the County Auditor receives a copy of each statement of ownership of a severed mineral interest filed with the Register of Deeds or Registrar of Titles, and that the County Auditor is required to perform certain ministerial duties in regard to the administration of the 25 cent per acre tax on such interests.

6. As to paragraph VI of plaintiffs' Complaint, defendant admits that failure to file the statement as to se-

vered mineral interests within the specified time results in forfeiture of such interests to the State of Minnesota by operation of law.

7. As to paragraphs VII and VIII of plaintiffs' Complaint, defendant denies that the tax imposed by Laws of Minnesota 1973, Chapter 650, Article XX, Sections 2 and 3, is either illegal or unconstitutional in any respect. Defendant alleges that such tax is, as stated in Laws of Minnesota 1973, Chapter 650, Article XX, Section 1 (Minn. Stat. Section 272.039), a tax on a class of property which has escaped taxation for years for the reasons set forth in Section 1. Defendant further alleges that the tax imposed by Article XX of Chapter 650 is uniform within the class of property taxed, i.e. severed mineral interests not otherwise taxed or otherwise exempt from taxation.

8. As to paragraph IX of plaintiffs' Complaint, defendant denies that any portion of Laws of Minnesota 1969, Chapter 829, Section 1, as amended by Laws of Minnesota 1973, Chapter 650, Article XX, Section 5, as it relates to the information to be included in the verified statement is unconstitutionally vague or indefinite. Defendant alleges that such information is specified with sufficient certainty so as to enable Plaintiffs as well as other owners of severed mineral interests to ascertain and comply with the requirements of the act. Defendant further alleges that such information is specified with sufficient certainty so as to render the provisions capable of rational, consistent execution and enforcement and in no way deprives plaintiffs of any property interests without due process of law.

9. As to paragraph X of plaintiffs' Complaint, defendant denies that either the Due Process Clauses of the United States Constitution, Amendment XIV, Section 1, or the Minnesota Constitution, Article I, Section 7, requires notice of an opportunity for hearing prior to the forfeiture of a severed mineral interest for failure to file the required statement within the period allowed. Defendant alleges that plaintiffs' rights are amply protected by filing the required statement within the period provided, which is in no event less than one year, and, failing this, by the right to recover the fair market value of any forfeited interest by following the procedures set forth in Section 6 of Article XX, (Minn. Stat. Section 93.55, 1973 Supplement). Furthermore, defendant alleges that the legislature provided for unprecedented notice of the requirements of Laws of Minnesota 1969, Chapter 829, as amended by Laws of Minnesota 1973, Chapter 650, Article XX, by requiring the Commissioner of Natural Resources not only to publish the 1969 Act three times in each county and once in each of two mining publications of nationwide circulation, but also to repeat such publication after the passage of the 1973 amendments.

10. As to paragraphs XI and XII of plaintiffs' Complaint, defendant denies the repetitious allegations contained therein.

11. As to paragraph XIII of plaintiffs' Complaint, defendant admits that the Commissioners of Natural Resources, Revenue, and Economic Development intend to carry out their duties and responsibilities under the act and further that a justiciable controversy exists herein.

12. As to paragraph XIV of plaintiffs' Complaint, defendant denies that there is any need for hasty and precipitous action by the Court in this matter and alleges that there is no way that issues raised at this late date by the plaintiffs will be resolved by the Supreme Court before January 1, 1975, absent a contrary time schedule from the Supreme Court which plaintiffs have yet to disclose to defendant. Defendant alleges that the plaintiffs had full notice of substantially all of the registration provisions complained of on May 27, 1969, the date of enactment of Laws of Minnesota 1969, Chapter 829. Defendant further alleges that the taxation and forfeiture provisions were known to plaintiffs as early as March, 1973, yet in all matters they failed to act until October, 1974. Defendant alleges, therefore, that any urgency in this matter has been created by plaintiffs themselves who should not be permitted to benefit thereby.

13. As to paragraph XV of plaintiffs' Complaint, defendant denies that plaintiffs lack an adequate remedy at law. Defendant alleges that a remedy is specifically and expressly provided for the situation where an interest in severed minerals forfeits for failure to file by Laws of Minnesota, Chapter 650, Article XX, Section 6. This law permits persons who have allowed their interests to forfeit for failure to file to recover the market value of the interest by bringing an action in the manner provided by Minn. Stat. Chapter 559, for an action to determine adverse claims. So far as the tax is concerned, defendant alleges that additional adequate remedies at law exist and are available to plaintiffs.

14. Except as herein otherwise admitted or alleged, defendant denies each and every allegation contained in plaintiffs' Complaint.

WHEREFORE, defendant asks for the following relief:

1. That the Court declare Laws of Minnesota 1969, Chapter 829, as amended by Laws of Minnesota 1973, Chapter 650, Article XX, to be valid in its entirety;
2. That defendant receive its costs and disbursements herein; and
3. That defendant have such other and further relief as the Court may deem proper.

Dated this 29 day of October, 1974.

KEITH M. BROWNELL
St. Louis County Attorney
By /s/ MICHAEL R. DEAN
Assistant County Attorney

STATE OF MINNESOTA IN DISTRICT COURT
County of Ramsey Second Judicial District

ALLISON CONTOS, DANIEL S. CASH, BARBARA JOHNSON, ALWORTH LAND AND IMPROVEMENT COMPANY, BURLINGTON NORTHERN, INC., CLOQUET LUMBER COMPANY, DOROTHY M. CROSBY, individually and as Executrix of the Estate of JOHN Q. A. CROSBY, DAY DEVELOPMENT COMPANY, JAMES T. M. PREST, UNITED STATES STEEL CORP., ST. CROIX LUMBER COMPANY, TORINUS COMPANY, and FIRST NATIONAL BANK OF MINNEAPOLIS, as Trustee under various instruments of trust,

Plaintiffs,

vs.

ROBERT L. HERBST, individually and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, individually and as Auditor for St. Louis County; and the STATE OF MINNESOTA,

Defendants,

and

JAMES R. HELTZER, as Commissioner of the Minnesota Department of Economic Development; and ARTHUR C. ROEMER, as Commissioner of the Minnesota Department of Revenue,

Intervening Defendants.

ANSWER IN INTERVENTION

Intervening defendants James R. Heltzer and Arthur C. Roemer, for their Answer in Intervention to plaintiffs' Complaint, allege:

1. James R. Heltzer is the Commissioner of the Minnesota Department of Economic Development and as such is responsible for administering the Indian loan program created by Laws of Minnesota 1973, Chapter 650, Article XX, Section 4, which program is funded by 20 percent of the revenue raised by the \$.25 per acre tax on severed mineral interests imposed by Section 3 of the same act.

2. The Chippewa and Sioux Indians residing in Minnesota, both on and off reservations, suffer from poverty and unemployment to a much greater extent than other residents of the State and as a result are greatly in need of the financial assistance in starting or expanding business enterprises which would be provided by the Indian loan program established by Laws of Minnesota 1973, Chapter 650, Article XX, Section 3.

3. A declaration by this Court that Laws of Minnesota 1973, Chapter 650, Article XX, is invalid would prevent James R. Heltzer, as Commissioner of the Minnesota Department of Economic Development, from implementing the Indian loan program and would thereby greatly injure the more than 23,000 Indian citizens of Minnesota.

4. Arthur C. Roemer is the Commissioner of the Minnesota Department of Revenue and as such, pursuant to Minn. Stat. §270.06 (1971), exercises general supervision over the administration of the taxation laws of the state

and is required to secure just and equal taxation in the entire state.

5. A declaration by this Court that Laws of Minnesota 1973, Chapter 650, Article XX, is invalid would have statewide effect and would protect and perpetuate a long-standing and unjust tax advantage in favor of those owning severed mineral interests.

6. Intervening defendants reallege and incorporate herein by reference all of the allegations contained in the original Answer interposed herein by the defendants State of Minnesota and Robert L. Herbst.

7. No prejudice will be caused to any party to this lawsuit as a result of the order of this Court allowing intervention by these defendants.

8. In order for any just resolution of this action to be accomplished based on a fair and equitable consideration of all the interests affected by this action, the intervening defendants must be allowed to become parties to this action and thereby participate in any trial thereof.

9. As a result of the foregoing, a justiciable controversy exists between the intervening defendants and plaintiffs.

WHEREFORE, intervening defendants ask for the following relief:

1. That the Court declare Laws of Minnesota 1969, Chapter 829, as amended by Laws of Minnesota 1973, Chapter 650, Article XX, to be valid in its entirety;

2. That intervening defendants receive their costs and disbursements herein; and

3. That intervening defendants have such other and further relief as the Court may deem proper.

WARREN SPANNAUS

Attorney General

C. PAUL FARACI

Deputy Attorney General

/s/ PHILIP J. OLFELT

Assistant Attorney General

/s/ STEVEN G. THORNE

Special Assistant Attorney General

Attorneys for Intervening Defendants

JAMES R. HELTZER and

ARTHUR C. ROEMER

Department of Natural Resources

375 Centennial Building

Saint Paul, Minnesota 55155

(612) 296-3294

STATE OF MINNESOTA IN DISTRICT COURT
County of St. Louis Sixth Judicial District

ALLISON CONTOS, DANIEL S. CASH, BARBARA JOHNSON, ALWORTH LAND AND IMPROVEMENT COMPANY, BURLINGTON NORTHERN, INC., CLOQUET LUMBER COMPANY, DOROTHY M. CROSBY, individually and as Executrix of the Estate of JOHN Q. A. CROSBY, DAY DEVELOPMENT COMPANY, JAMES T. M. PREST, UNITED STATES STEEL CORP., ST. CROIX LUMBER COMPANY, TORINUS COMPANY, and FIRST NATIONAL BANK OF MINNEAPOLIS, as Trustee under various instruments of trust,

Plaintiffs,

vs.

ROBERT L. HERBST, individually and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, individually and as Auditor for St. Louis County; and the STATE OF MINNESOTA,

Defendants,

and

THE MINNESOTA CHIPPEWA TRIBE,

Intervening Defendants.

ANSWER IN INTERVENTION

Intervening Defendant, the Minnesota Chippewa Tribe, for its Answer in Intervention against the above-named Plaintiffs, allege:

1. The Minnesota Chippewa Tribe is a recognized Indian Tribe organized under a Constitution and By-Laws ratified by the Tribe on June 20, 1936 and approved by the Secretary of the Interior on July 24, 1936, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378) and pursuant to Section 17 of the Act of June 18, 1934 (48 Stat. 984). A Federal Corporation Charter was issued to the Minnesota Chippewa Tribe on September 17, 1937 and said Charter was duly submitted for ratification by the adult members of the Tribe living on the Reservations of the Tribe and was, on November 13, 1937, duly adopted. The Minnesota Chippewa Tribe is composed of six Reservations located in Northern Minnesota, namely: The White Earth, Leech Lake, Fond du Lac, Bois Forte, Grand Portage and Mille Lacs Reservations. Photocopies of the Corporate Charter of the Minnesota Chippewa Tribe and Revised Constitution and By-Laws of the Minnesota Chippewa Tribe are attached hereto as Intervening Defendants' Exhibits "A" and "B" and adopted herein by reference as though set forth herein in their entirety.

2. Intervening Defendants reallege and incorporate herein by reference all of the allegations contained in the original Answer interposed herein by the Defendants State of Minnesota and Robert L. Herbst.

3. The interests of this Intervening Defendant are not adequately represented by any other party to this action, in as much as the interests of these Intervening Defendants and the State of Minnesota, Commissioner of the Minnesota Department of Natural Resources, Robert L.

Herbst and Andrew Korda, as Auditor for St. Louis County, are diverse in many respects. The financial interest of the Intervening Defendants is set forth in the Laws of 1973, Chapter 650, Article XX, as contained in Section 4, as set forth in Minnesota Statutes §362.40, which provides that twenty percent of the revenue from the tax funds derived under this Statute shall be set aside for an Indian loan program and said loans to Reservation Indians to be administered by the Tribal Council or Reservation Business Committees of the Reservations located in Minnesota.

4. That the six Reservations composing the Minnesota Chippewa Tribe are economically depressed and the per capita income of the Indians residing thereon is within the poverty levels established by the United States Government's Office of Economic Opportunity.

5. That the provisions of Minnesota Statutes §362.40 would further the economic development of the Minnesota Chippewa Tribe and its Indian members by providing loan funds for the purpose of starting business enterprises or expanding going businesses.

6. That a declaration by this Court declaring the above referenced Laws as invalid would greatly injure the Minnesota Chippewa Tribe and its constituent members.

7. That no prejudice will be caused to any party to this lawsuit as a result of the order of this Court allowing intervention by this Defendant.

8. That, in order for any just resolution of this action to be accomplished which will fairly and equitably take

account of all the interests affected by this action, Intervening Defendants must be allowed to become parties to his action and thereby participate in any trial of said matter.

9. That, because of the foregoing, a justifiable controversy exists between the Intervening Defendants and the parties to this action.

WHEREFORE, Intervening Defendants pray for the judgment of this Court as follows:

1. That the Court declare the Laws of Minnesota 1969, Chapter 829, as amended by the Laws of Minnesota 1973, Chapter 650, Article XX, to be valid in its entirety.

2. That Intervening Defendants receive their costs and disbursements herein and that they be awarded reasonable attorneys' fees.

3. That Intervening Defendants have such other and further relief as this Court may deem property.

Dated this 21st day of November, 1974.

PETERSON, TUPPER & SMITH

BY /s/ KENT P. TUPPER

Attorneys for Intervening Defendants

Post Office Box 160

Walker, Minnesota 56484

Telephone: (218) 547-1711

STATE OF MINNESOTA
County of Ramsey

DISTRICT COURT
Second Judicial District

ALLISON CONTOS, DANIEL S. CASH, BARBARA JOHNSON, ALWORTH LAND AND IMPROVEMENT COMPANY, BURLINGTON NORTHERN, INC., CLOQUET LUMBER COMPANY, DOROTHY M. CROSBY, individually and as Executrix of the ESTATE OF JOHN Q. A. CROSBY, DAY DEVELOPMENT COMPANY, JAMES T. M. PREST, UNITED STATES STEEL CORP., ST. CROIX LUMBER COMPANY, TORINUS COMPANY, FIRST NATIONAL BANK OF MINNEAPOLIS, as Trustee under various instruments of trust, NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, BOISE CASCADE CORPORATION, and DR. ERNEST A. GOFF, JR.,

Plaintiffs,

vs.

ROBERT L. HERBST, Individually, and as COMMISSIONER OF THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES; ANDREW KORDA, Individually, and as Auditor for ST. LOUIS COUNTY; THE STATE OF MINNESOTA; ARMANDO M. De-YOANNES, as Acting COMMISSIONER OF THE MINNESOTA DEPARTMENT OF ECONOMIC DEVELOPMENT; ARTHUR C. ROEMER, as COMMISSIONER OF THE MINNESOTA DEPARTMENT OF REVENUE, and the MINNESOTA CHIPPEWA TRIBE,

Defendants.

STIPULATION

No. 400979

IT IS HEREBY STIPULATED AND AGREED between the plaintiffs and defendants herein, by their respective counsel of record, as follows:

1. That plaintiff M. Allison Contos resides at 129 West Anoka Street, Duluth, Minnesota; that she is a housewife and is not otherwise employed outside the home; that she presently receives \$43.99 per year as minimum rental under leases of severed mineral interests to Erie Mining Company; that she has an undivided fractional ownership interest in severed minerals in approximately 761 acres located in St. Louis, Cook, and Crow Wing Counties, Minnesota, the legal description of which being set forth in her answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that these interests were acquired by her by gift and by inheritance.

2. That plaintiff Barbara Johnson resides at 4387 Midway Road, Duluth, Minnesota; that she is a housewife and is not otherwise employed outside the home; that she presently receives \$43.99 per year as minimum royalties under leases of severed mineral interests to Erie Mining Company; that she has an undivided fractional ownership interest in severed minerals in approximately 761 acres located in St. Louis, Cook, and Crow Wing Counties, Minnesota, the legal description of which being set forth in her answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that she acquired these interests by gift and by inheritance.

3. That plaintiff Daniel S. Cash resides at 2747 Dellwood Avenue North, Roseville, Minnesota; that he is 53 years of age; that he is employed as purchasing agent at Batzli Electric Company, having its place of business at 1807 South First Street, Minneapolis, Minnesota; that he presently receives \$43.99 per year as minimum royalties under leases of severed mineral interests to Erie Mining Company; that he has an undivided fractional ownership interest in severed minerals in approximately 761 acres located in Cook, St. Louis and Crow Wing Counties, Minnesota, the legal descriptions of which being set forth in his answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; that he acquired these interests by gift and by inheritance.

4. That plaintiff, Dorothy M. Crosby resides at 600 West Superior Street, Duluth, Minnesota; that she is retired and not employed; that she has individually, and as Executrix of the Estate of John Q. A. Crosby, an undivided fractional ownership interest in severed minerals in approximately 33,230 acres located in Cass, Cook, Crow Wing, Itasca, Koochiching, and Lake Counties, Minnesota, the legal descriptions of which being set forth in her answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that she acquired approximately 99% of these by inheritance and the remainder by gift.

5. That plaintiff James T. M. Prest resides at 2317 Woodland Avenue, Duluth, Minnesota; that he is an attorney at law with his place of business located at 1000 Torrey Building, Duluth, Minnesota, that he has an un-

divided fractional ownership interest in severed minerals in approximately 91,000 acres located in Beltrami, Pine, Grant, Clay, Wadena, Polk, Mille Lacs, Wilkin, Becker, Hubbard, Douglas, Todd, Pennington, Ottertail, Roseau, Morrison, Marshall, St. Louis, Itasca and Koochiching Counties, Minnesota, the legal descriptions of which being set forth in his answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that he acquired these interests by exchange, by purchase and as compensation for services.

6. That plaintiff Day Development Company is a corporation duly incorporated under the laws of the State of Minnesota, having its place of business at 1000 First National Bank Building, Minneapolis, Minnesota; that it has an undivided fractional ownership interest in severed minerals in approximately 21,485 acres located in Morrison, Itasca and St. Louis Counties, Minnesota, the legal descriptions of which being set forth in its answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst and that it acquired these interests by purchase and by reservation.

7. That plaintiff St. Croix Lumber Company is a corporation duly incorporated under the laws of the State of Minnesota, having its place of business at 1102 Minnesota Building, St. Paul, Minnesota; that it has an undivided fractional ownership interest in severed minerals in approximately 23,400 acres located in St. Louis and Lake Counties, Minnesota, the legal descriptions of which being set forth in its answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert

L. Herbst; and that it acquired these severed interests by purchase and by reservation.

8. That plaintiff Torinus Company is a corporation duly incorporated under the laws of the State of Minnesota, having its principal place of business at 1102 Minnesota Building, St. Paul, Minnesota; that it has an undivided fractional ownership interest in severed minerals in approximately 120 acres located in St. Louis County, Minnesota, the legal description of which being set forth in its answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that it acquired these interests by reservation.

9. That plaintiff Northwestern National Bank of Minneapolis is a National Banking Association, having its principal place of business at 7th and Marquette, Minneapolis, Minnesota, that it has, as Trustee under various instruments of trust, a fractional ownership interest in severed minerals in approximately 15,080 acres located in St. Louis, Hubbard, Morrison, Crow Wing, Itasca, and Aitkin Counties, Minnesota, the legal descriptions of which being set forth in its answers to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that it acquired these interests by inheritance, by conveyance into trust and by reservation.

10. That plaintiff Boise Cascade Corporation is a corporation duly incorporated under the laws of the State of Delaware; that it is duly certified and authorized to do business within the State of Minnesota pursuant to the requirements set forth in Minnesota Statutes, Chapter 303; that

it has its principal place of business at 1 Jefferson Square, Boise, Idaho, that it claims an undivided fractional ownership interest in severed minerals in approximately 17,680 acres located in Koochiching, St. Louis, Itasca, Lake of the Woods, and Cook Counties, Minnesota, the legal descriptions of which being set forth in its answer to No. 7a of interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; that it failed to file the statements of severed mineral interests within the period specified in Minnesota Statutes §93.52; and that these interests were acquired as a result of the merger of Minnesota and Ontario Paper Company into plaintiff company on January 29, 1965, and also by reservation.

11. That plaintiff Dr. Ernest A. Goff, Jr., resides at 2680 Warm Springs Road, Glen Ellen, California; that he has an undivided fractional ownership interest in severed minerals in approximately 1,880 acres located in Itasca and St. Louis Counties, Minnesota, the legal descriptions of which being set forth in his answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that he acquired these interests by inheritance.

12. That plaintiff First National Bank of Minneapolis is a National Banking Association, having its principal place of business at 120 South Sixth Street, Minneapolis, Minnesota, that it has, as Trustee under various instruments of trust, an undivided fractional ownership interest in severed minerals in approximately 4,209 acres located in Itasca, St. Louis, Todd, Crow Wing, Cass, Ottertail, Aitkin and Meeker Counties, Minnesota, the legal descrip-

tions of which being set forth in its answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that it acquired these interests by inheritance, by conveyance into trust and by reservation.

13. That plaintiff Cloquet Lumber Company is a corporation duly incorporated under the laws of the State of Iowa, having its place of business at 620 Walnut Street, Cloquet, Minnesota; that it is duly certified and authorized to do business in Minnesota pursuant to the requirements of Minnesota Statutes, Chapter 303; that it has an undivided fractional ownership interest in severed minerals in approximately 81,208 acres located in Cook, Lake and St. Louis Counties, Minnesota, the legal descriptions of which being set forth in its answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that it acquired these interests by reservation.

14. That plaintiff Burlington Northern, Inc. is a corporation duly incorporated under the laws of the State of Delaware, having its principal place of business in Minnesota at 176 East Fifth Street, St. Paul, Minnesota; that it is duly certified and authorized to do business in Minnesota pursuant to the requirements of Minnesota Statutes, Chapter 303; and that it has an undivided fractional ownership interest in severed minerals in approximately 237,689 acres located in forty-nine (49) counties of the State of Minnesota, the legal descriptions of which being set forth in its answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst;

and that it acquired these interests principally by reservation.

15. That plaintiff Alworth Land and Improvement Company is a corporation duly incorporated under the laws of the State of Minnesota, having its principal place of business at 1605 Alworth Building, Duluth, Minnesota, and that it has an undivided fractional ownership interest in severed minerals in approximately 10,520 acres located in Aitkin, St. Louis, Itasca, and Lake Counties, Minnesota, the legal descriptions of which being set forth in its answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that it acquired these interests principally as contribution of capital to the corporation but to a lesser extent also by reservation.

16. That plaintiff United States Steel Corporation is a corporation duly incorporated under the laws of the State of Delaware, having its principal place of business in Minnesota at Missabe Building, Duluth, Minnesota; that it is duly certified and authorized to do business within the State of Minnesota pursuant to the requirements set forth in Minnesota Statutes, Chapter 303; that it has an undivided fractional ownership interest in severed minerals in approximately 721,640 acres located in nineteen (19) counties of the State of Minnesota, the legal descriptions of which being set forth in its answer to No. 7a of the interrogatories propounded by defendants State of Minnesota and Robert L. Herbst; and that it or its predecessor or merged corporations acquired these interests substantially but not exclusively, by exception.

17. The interests of the plaintiffs as described in the foregoing Stipulation were owned by plaintiffs on and prior to December 31, 1973.

18. The severed mineral interests of each plaintiff herein in St. Louis County has been described by the use of a color-coded map prepared on behalf of the plaintiffs, which map has been examined by counsel for all parties and may be marked as a plaintiffs' exhibit and received in evidence without further foundation. Said map depicts all of the severed mineral interests of each plaintiff in St. Louis County except United States Steel Corporation, for which it depicts approximately 60%-70% of the severed mineral interests thereof within said county.

19. That the severed mineral interests owned by plaintiffs United States Steel Corporation and Burlington Northern, Inc. throughout the State of Minnesota and also the general bedrock geology of the state have been described by the use of two color-coded maps prepared on behalf of the state defendants; that the representation of the interests of the plaintiffs United States Steel Corporation and Burlington Northern, Inc. as set forth on said maps are based upon the legal descriptions set forth in the answers of these plaintiffs to No. 7a of the interrogatories propounded by defendants, and that if called the person or persons who prepared said map on behalf of the state defendants would so testify; and that these maps have been examined by counsel for all parties and may be marked as defendants' exhibits and received in evidence without further foundation.

20. That the state defendants on January 14, 1975, sent questionnaires to the Registers of Deeds of each of the eighty-seven (87) counties in Minnesota asking for the number of statements of severed mineral interests filed pursuant to Minnesota Statutes §93.52 (1974) and the total number of acres represented by such statements; that to date responses have been received from every county except Crow Wing, Fillmore, Kandiyohi and Wadena Counties; and that according to these responses a total of 11,725 statements have been filed representing approximately 2,782,367 acres of severed mineral interests. Furthermore, that the completed questionnaires have been examined by counsel for all parties and may be marked as a defendants' exhibit and received in evidence without further foundation; and that, in addition, a summary, by county, of these responses have been prepared by the state defendants, has been examined by counsel for all parties and may be marked as a defendants' exhibit and received in evidence without further foundation.

21. That for the purpose of this Stipulation a "reservation" or "exception" of minerals is defined to occur when an owner of an unsevered interest in both minerals and surface in a given parcel of land conveys to another party the surface interest in the parcel only, excepting from the conveyance and reserving to himself the interest in minerals.

22. That this Stipulation is for the purpose of the trial of the above-entitled action only; that the matters contained herein are not admitted for the purposes of any other proceeding whatsoever; and that defendants speci-

fically do not hereby waive any right to question, in any other context, the ownership of any specific severed mineral interest.

23. By the execution of this Stipulation the parties intend to simplify presentation of evidence to the Court, but both reserve the right to make argument as to the weight which should be afforded to any of the facts stipulated to herein, and to introduce such additional factual evidence as is deemed material.

Dated this 3 day of November, 1975.

HANFT, FRIDE, O'BRIEN & HARRIES
BY /s/ TYRONE P. BUJOLD

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/s/ STEVEN G. THORNE
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By KENT P. TUPPER

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STATE OF MINNESOTA
County of Ramsey

DISTRICT COURT
Second Judicial District

ALLISON CONTOS, DANIEL S. CASH, BARBARA JOHNSON, ALWORTH LAND AND IMPROVEMENT COMPANY, BURLINGTON NORTHERN, INC., CLOQUET LUMBER COMPANY, DOROTHY M. CROSBY, Individually, and as Executrix of the Estate of JOHN Q. A. CROSBY, DAY DEVELOPMENT COMPANY, JAMES T. M. PREST, UNITED STATES STEEL CORP., ST. CROIX LUMBER COMPANY, TORINUS COMPANY, FIRST NATIONAL BANK OF MINNEAPOLIS, as Trustee under various instruments of trust, NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, BOISE CASCADE CORP., DR. ERNEST A. GOFF, JR., and PAUL M. ANDRESEN,

Plaintiffs,

vs.

ROBERT L. HERBST, Individually, and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, Individually, and as Auditor for St. Louis County; the STATE OF MINNESOTA; JAMES R. HELTZER, as Commissioner of the Minnesota Department of Economic Development; ARTHUR C. ROEMER, as Commissioner of the Minnesota Department of Revenue; and the MINNESOTA CHIPPEWA TRIBE,

Defendants.

MEMORANDUM OPINION

File No. 400979

The above-entitled matter came on for trial, without a jury, before the Honorable Harold W. Schultz, Judge of the District Court, on October 27, 28, 29, and 30, 1975, in Courtroom 1315, Ramsey County Courthouse, Saint Paul, Minnesota.

Edward T. Fride, Esquire, Tyrone P. Bujold, Esquire, and Paul J. Lokken, Esquire, of the firm of Hanft, Fride, O'Brien & Harries, 1200 Alworth Building, Duluth, Minnesota, appeared representing the Plaintiffs.

C. Paul Faraci, Esquire, Deputy Attorney General, Philip J. Olfelt, Esquire, Assistant Attorney General, and Steven G. Thorne, Esquire, Special Assistant Attorney General, 375 Centennial Office Building, Saint Paul, Minnesota, appeared representing the State Defendants.

Leo McDonnell, Esquire, Assistant St. Louis County Attorney, Duluth, Minnesota, appeared representing Defendant Andrew Korda, Individually, and as Auditor for St. Louis County.

Kent Tupper, Esquire, of the firm of Peterson, Tupper & Smith, P. O. Box 160, Walker, Minnesota, appeared representing Defendant Minnesota Chippewa Tribe.

After the trial was concluded, counsel were invited to submit briefs in addition to the trial memorandum they had earlier furnished to the Court. These briefs, in addition to all of the other files, records, exhibits, memoranda, etc., were carefully reviewed and read by the Court.

This is an action for declaratory judgment seeking a determination by the Court that Article XX of Chapter 650,

Laws of Minnesota for 1973, is constitutionally invalid on grounds as set forth in the Complaint and Amended Complaint of the plaintiffs. Further, plaintiffs request a permanent injunction prohibiting the defendants from in any way implementing or enforcing the provisions of the Act. The grounds for the claim of unconstitutionality are set forth in plaintiffs' Complaint and Amended Complaint in the following manner:

"VII"

"That Section 2 of said Act (amending Minnesota Statute 272.04, Subd. 1) which permits the imposition of a tax on severed mineral rights such as that provided for in Section 3 of the Act is illegal and unconstitutional in the following respects;

- "A. It violates the Uniformity requirements of Minnesota Constitution, Article IX, Section 1. Said Uniformity Clause does not permit taxation of any class of property on a basis which is not in some reasonable way related to value.
- "B. It violates the Equal Protection Clause of the United States Constitution, Amendment XIV, Section 1.
- "C. It is class or special legislation forbidden by Minnesota Constitution, Article I, Section 2, and Article IV, Section 33, as well as by United States Constitution, Amendment XIV, Section 1. The Act selects particular individuals from a class and imposes on them special burdens from which others of the same class are exempt.

- "D. The classification is based solely on ownership which thus amounts to an arbitrary and illegal classification of 'persons' rather than 'property' for taxation.
- "E. The classification is illegal and arbitrary as well as discriminatory in failing to assess and tax unsevered mineral interests on the same basis as severed mineral interests. Thus if the surface owner also owns the mineral interests he is exempt from said tax.
- "F. It violates Minnesota Statute 273.11 requiring that 'all property shall be valued at its market value.'

"VIII"

"The tax imposed under Section 3 of the Act (amending Minnesota Statute 273.13 by adding Subd. 2a, Class 1b) is constitutionally infirm in the following respects:

- "A. Denomination of severed mineral interests as a classification for the purposes of taxation is illegal for the reasons stated in paragraph VII of this Complaint.
- "B. Imposition of a flat rate per acre tax and a minimum annual tax of \$2.00 without regard to the kind, quality, quantity, value of existence of the mineral interest being taxed is illegal in violation of the due process requirements of Minnesota Constitution, Article I, Section 7, and United States Constitution, Amendment XIV, Section 1, as well as the Uniformity requirements of Min-

nesota Constitution, Article IX, Section 1, and the Equal Protection Clause of United States Constitution, Amendment XIV, Section 1. The Act does not provide for any demonstrable relation between the amount of the tax and the value of the interest subject to the tax.

- "C. That portion of Section 3 of the Act providing for a minimum annual tax of \$2.00 with respect to any mineral interest is so vague and indefinite as to offend due process in violation of the due process requirements of Minnesota Constitution, Article I, Section 7, and United States Constitution, Amendment XIV, Section 1.

"IX"

"That Section 5 of the Act (amending Minnesota Statute 93.52, Subd. 2) which sets forth the information required to be included in the verified statement, is so vague and indefinite that the plaintiffs as well as other owners of severed mineral interests cannot determine in good faith the proper manner in which to comply with the requirements of the Act with respect to the registration of many mineral interests, and therefore the plaintiffs stand in jeopardy of being deprived of these interests without due process of law in violation of Minnesota Constitution, Article I, Section 7, and United States Constitution, Amendment XIV, Section 1.

"X"

"That Section 6 of the Act (amending Minnesota Statute 93.55) providing for forfeiture of a mineral interest in

the event of a failure to file is violative of Minnesota Constitution, Article I, Section 7, and United States Constitution, Amendment XIV, Section 1, which prohibits deprivation of property without due process of law, in the following respects:

- "A. The Act makes no meaningful provision for notice either of the registration requirement or of impending forfeiture.
- "B. The Act makes no provision for a hearing on or judicial determination of the validity of the forfeiture.
- "C. Due process requires notice before judgment and an opportunity to be heard in an orderly proceeding adapted to the nature of the case.

"XI"

"That Section 6 of the Act, providing for forfeiture of a mineral interest in the event of a failure to file, constitutes a taking of private property without just compensation, and is therefore violative of Minnesota Constitution, Article I, Section 13, and United States Constitution, Amendment V.

"XII"

"That Section 6 of the Act, providing for forfeiture of a mineral interest in the event of a failure to file, operates to destroy vested property interests acquired by legally binding contract by subsequently enacted legislation, and therefore constitutes an impairment of contract in violation of Minnesota Constitution, Article I, Section 11, and United States Constitution, Article I, Section 10.

"XIII"

"The implementation and enforcement of the Act will violate presently existing vested rights; the Act contravenes long established usage and accepted practice."

DISCUSSION—TAX PROVISIONS

At the beginning of the trial the Court received a stipulation signed by counsel for all parties setting out certain facts agreed upon for the purposes of the trial. The Court accepted the stipulation, and the matters contained therein are accepted as findings of fact by the Court.

In setting the scene for discussion of this matter, notice should be taken of Chapter 829, Laws of Minnesota for 1969, quoted as M.S.A. 93.52 to and including 93.58. These statutes were entitled, "An act relating to minerals; authorizing the state to issue permits to prospect for, and leases to mine, certain minerals where mineral interests have been severed from surface interests."

The purposes of the law are described in M.S. 93.52, Subd. 1, as follows: "The purpose of this act is to identify and clarify the obscure and divided ownership condition of severed mineral interests in this state. Because the ownership condition of many severed mineral interests is becoming more obscure and further fractionalized with the passage of time, the development of mineral interests in this state is often impaired. Therefore, it is in the public interest and serves a public purpose to identify and clarify these interests."

The chapter further provided that every owner of a mineral interest owned separately from the fee title to the sur-

face of the property shall file for record, in the county where the interest is located, a verified statement as to his ownership. Failure to file such a statement in accordance with the statute allowed the Commissioner of Conservation to lease such an interest. There are other provisions of this Act of 1969 that need no further discussion at this time.

In the legislative session of 1973 there was enacted Chapter 650, Laws of 1973, entitled, "An act relating to government; raising revenue; providing for the administration of public welfare and other public activities; appropriating money; providing penalties"; and amending certain statutes and adding sections, particularly Section M.S. 93.52, Subd. 2; 93.55; and 93.58.

Article XX of Chapter 650 is the article under attack here because, among other items, the article provided that anyone who failed to file within the statutory period would forfeit his severed mineral interests to the state; and severed mineral interests not otherwise taxed were subjected to a tax of 25 cents per acre per year or \$2.00 per interest per year, whichever is greater. These are the two important provisions of this article resulting in plaintiffs' action claiming improper and unconstitutional action on the part of the legislature.

Article XX of Chapter 650, Laws of 1973, begins by amending M.S. Chapter 272 by adding a section to read:

"LEGISLATIVE FINDINGS AND CONCLUSIONS RELATED TO THE TAXATION OF MINERALS OWNED SEPARATELY FROM THE SURFACE. The legislature finds, for the reasons stated below, that a class of real property has been

created which, although not exempt from taxation, is not assessed for tax purposes and does not, therefore, contribute anything toward the cost of supporting the governments which protect and preserve the continued existence of the property. These reasons are as follows: (1) In the case of Washburn v. Gregory, 1914, 125 Minn. 491, 147 N.W. 706, the Minnesota Supreme Court determined that where mineral interests are owned separately from the surface interests in real estate, the mineral interest is a separate interest in land, separately taxable, and does not forfeit if the overlying surface interest forfeits for nonpayment of taxes due on the surface interest; (2) since this 1914 decision, mineral interests owned separately from the surface have been valued and assessed for tax purposes, as a practical matter, only if the value of the minerals has been determined through drilling and drill core analysis; and (3) The absence of any taxation of mineral interests owned separately from the surface, except where drilling analysis is available, has encouraged the separation of ownership of surface and mineral estates and resulted in the creation of hundreds of thousands of acres of untaxed mineral estate lands which thus are immune from tax forfeiture. The legislature also finds that the province of Ontario in Canada, which has land ownership patterns and mineral characteristics similar to that of Minnesota, has imposed a tax of \$.50 an acre on minerals owned separately from the surface since 1968, and \$.10 an acre before that. The legislature further finds that the identification of separate-

ly owned mineral interests by taxing authorities requires title searches which are extremely burdensome and, where no public tract index is available, prohibitively expensive. This result is caused in part by the decision in Wichelman v. Messner, 1957, 250 Minn. 88, 83 N.W. (2d) 800, where the so called '40 year law' was held inapplicable to mineral interests owned separately from surface interests. On the basis of the above findings, and for the purpose of requiring mineral interests owned separately from surface interests to contribute to the cost of government at a time when other interests in real property are heavily burdened with real property taxes, the legislature concludes that the taxation of severed mineral interests as provided in section 3 of this article is necessary and in the public interest, and provides fair taxation of a class of real property which has escaped taxation for many years. The legislature further concludes that such a tax is not prohibited by Minnesota Constitution, Article 18. The legislature concludes finally that the amendments and repeals made by this act to Minnesota Statutes, Sections 93.52 to 93.58, are necessary to provide adequate identification of mineral interests owned separately from the surface and to prevent the continued escape from taxation of obscure and fractionalized severed mineral interests."

In addition to the fact stated previously, and as contained in the stipulation received by the Court, defendants urge upon the Court an acceptance as to facts concerning

mineral reservations and severed mineral interests the remarks of W. K. Montague, an acknowledged expert in this field as well as an attorney at law. These remarks are found in the amicus brief prepared by Mr. Montague in the case of Kangas-Jacobson Dairy, Inc., v. Lloyd-Smith, 241 Minn. 317, 62 N.W. 2d 915 (1954). The Court accepts Mr. Montague's remarks as an accurate description of the history of severed mineral rights.

Plaintiffs first claim there is no basis for the taxation of "severed" mineral interests as a separate class without similar treatment of "unsevered" minerals; that such a classification is arbitrary and improper; violating equal protection provisions of state and federal constitutions, as well as the state constitutional prohibition against special or class legislation.

The Court concludes that the plaintiffs have failed to demonstrate the claimed deficiency of this law on these grounds:

The legislature, in Chapter 650, Laws of 1973, Article XX, clearly stated, in Section 272.039, its reasons for the enactment of this tax. The Court deems those reasons sound and within the confines of the restrictions regarding the ability to tax as provided in the federal and state constitutions.

Paragraphs 7, 8, and 9 of the plaintiffs' Complaint allege that the uniformity clause of the state constitution and the equal protection and due process clauses of the federal constitution all require that taxes be absolutely uniform according to value; that severed mineral interests vary widely in value; and as a result a flat rate tax of 25 cents per acre on severed mineral interests is constitution-

ally impermissible. Also, that various portions of the statute are void for vagueness under the due process clauses of the state and federal constitution.

After reviewing the testimony received in the trial of this matter, the briefs and argument of counsel, the Court concludes that plaintiffs have not sustained their burden of proving the constitutional infirmity of the tax in question. Neither have they proved that the language of the statute is violative of the due process clauses of the state and federal constitution.

Admittedly, there are some unique characteristics about severed mineral interests that lead the Court to conclude that the legislature was within its prerogatives in enacting this tax. These mineral interests are difficult to identify, difficult to assess, difficult to determine as to market value, susceptible of being manipulated to avoid taxation, and involve rather expensive governmental activities when their identification requires title searches. These severed mineral interests do have a value, albeit the value may vary greatly, and are subject to taxation by the legislature. Mutual Benefit Insurance Co. vs. County of Martin, 104 Minn. 179, 60 N.W. 572 (1908).

After reading some of the cases cited in defendants' brief, the Court concludes that as a matter of practicality, considering all of the circumstances, the action of the legislature in providing for a flat 25 cents per acre or \$2.00 per interest tax is not violative of the constitutional provisions applicable to this kind of tax.

DISCUSSION—FORFEITURE PROVISIONS

The final claims by plaintiffs contained in their Amended Complaint, paragraphs X, XI, XII, and XIII, allege that the forfeiture provisions for failure to file within the statutory period of time without the owner of the property being provided with a notice or a hearing amounts to a taking of the property without procedural due process and, therefore, violates both state and federal constitutional provisions. Section 6 of the Act contains the forfeiture provisions. Section 6 is amended by the laws of 1973 by the amendment of M.S. 93.55.

Again, every argument in support of and in opposition to plaintiffs' allegations with respect to the constitutional infirmity of the forfeiture provisions have been examined carefully by the Court. It would appear that plaintiffs are correct and that the efforts of the legislature to provide for forfeiture of severed mineral interests in the event of a failure to file a registration statement without any type of notice or any type of hearing or any type of judicial determination violates both the state and federal constitutional provisions of due process. I believe that it is necessary that there be some provision for notice and hearing or judicial determination as to whether or not forfeiture of a property right for failure to register is valid.

The 14th Amendment requires that before a person can be deprived of any property right or other protected interest he must be given notice and afforded the opportunity for some kind of hearing. Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed. 2d 90 (1971); Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 30 L.Ed. 2d 181 (1972).

This legislation authorizes the taking of this valuable right without notice and without any opportunity to be heard. While under some circumstances a state is constitutionally permitted to affect a property interest after notice given by some method other than personal service, such as publication, no person may be deprived of a property interest without some form of notice and an opportunity to be heard. Mullane v. Central Hanover Bank and Trust, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

Because the challenged legislation provides for the taking of valuable property without notice and without an opportunity to be heard, it denies to the owner of severed mineral rights their right to procedural due process of law and is, therefore, unconstitutional.

The Court by this order determines the provisions of the Act, as they relate to the taxing provisions, to be within the purview of the law and constitutionally proper. However, the section dealing with the forfeiture provisions are constitutionally improper and cannot be upheld.

The defendants are, therefore, requested to prepare, in conformity with the terms of this order, such findings of fact, conclusions of law, and order for judgment as are necessary to comply with the provisions of this opinion. When they are submitted to the Court, they will be examined and modified, if necessary, and ultimately signed by the Court as the order of the Court with respect to this matter.

Dated at Saint Paul, Minnesota, this 10th day of May, 1976.

/s/ HAROLD W. SCHULTZ
Judge of the District Court

(Title of Cause.)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT**

File No. 400979

The above-entitled matter came on for trial without a jury, before the undersigned, on October 27, 28, 29 and 30, 1975, in Courtroom 1315, Ramsey County Courthouse, St. Paul, Minnesota.

Edward T. Fride, Esquire, Tyrone P. Bujold, Esquire, and Paul J. Lokken, Esquire, of the firm of Hanft, Fride, O'Brien & Harries, 1200 Alworth Building, Duluth, Minnesota, appeared representing the plaintiffs.

C. Paul Faraci, Esquire, Deputy Attorney General, Philip J. Olfelt, Esquire, Assistant Attorney General, and Steven G. Thorne, Special Assistant Attorney General, 375 Centennial Building, St. Paul, Minnesota, appeared representing the State defendants.

Leo McDonnell, Esquire, Assistant St. Louis County Attorney, Duluth, Minnesota, appeared representing defendant Andrew Korda, Individually and as Auditor for St. Louis County, Minnesota.

Kent Tupper, Esquire, of the firm of Peterson, Tupper & Smith, Walker, Minnesota, appeared representing defendant Minnesota Chippewa Tribe.

At trial the parties submitted a stipulation of facts which is set forth, so far as deemed relevant, as Findings of Fact Numbers 1-17.

Upon the arguments and briefs of counsel and upon all the evidence, testimony, files, records and proceedings here-

in, the Court makes the following findings of fact, conclusions of law and order for judgment:

FINDINGS OF FACT

1. Plaintiff M. Allison Contos resides at 129 West Anoka Street, Duluth, Minnesota. She is a housewife and is not otherwise employed outside the home. She currently receives \$43.99 per year as minimum rental under leases of severed mineral interests to Erie Mining Company. She has an undivided fractional ownership interest in severed minerals in approximately 761 acres located in St. Louis, Cook, and Crow Wing Counties, Minnesota, which interests she acquired by gift and by inheritance.

2. Plaintiff Barbara Johnson resides at 4387 Midway Road, Duluth, Minnesota. She is a housewife and is not otherwise employed outside the home. She currently receives \$43.99 per year as minimum royalties under leases of severed mineral interests to Erie Mining Company. She has an undivided fractional ownership interest in severed minerals in approximately 761 acres located in St. Louis, Cook, and Crow Wing Counties, Minnesota, which interests she acquired by gift and by inheritance.

3. Plaintiff Daniel S. Cash resides at 2747 Dellwood Avenue North, Roseville, Minnesota. He is 53 years of age and is employed as purchasing agent at Batzli Electric Company, having its place of business at 1807 South First Street, Minneapolis, Minnesota. He currently receives \$43.99 per year as minimum royalties under leases of severed mineral interests to Erie Mining Company. He has an undivided fractional ownership interest in severed minerals

in approximately 761 acres located in Cook, St. Louis and Crow Wing Counties, Minnesota, which interests he acquired by gift and by inheritance.

4. Plaintiff Dorothy M. Crosby resides at 600 West Superior Street, Duluth, Minnesota. She is retired and not employed. She has individually, and as Executrix of the Estate of John Q. A. Crosby, an undivided fractional ownership interest in severed minerals in approximately 33,230 acres located in Cass, Cook, Crow Wing, Itasca, Koochiching, and Lake Counties, Minnesota, approximately 99% of which interests she acquired by inheritance and the remainder by gift.

5. Plaintiff James T. M. Prest resides at 2317 Woodland Avenue, Duluth, Minnesota. He is an attorney at law with his place of business located at 1000 Torrey Building, Duluth, Minnesota. He has an undivided fractional ownership interest in severed minerals in approximately 91,000 acres located in Beltrami, Pine, Grant, Clay, Wadena, Polk, Mille Lacs, Wilkin, Becker, Hubbard, Douglas, Todd, Pennington, Ottertail, Roseau, Morrison, Marshall, St. Louis, Itasca and Koochiching Counties, Minnesota, which interests he acquired by exchange, by purchase and as compensation for legal services.

6. Plaintiff Day Development Company is a corporation duly incorporated under the laws of the State of Minnesota, having its place of business at 1000 First National Bank Building, Minneapolis, Minnesota. It has an undivided fractional ownership interest in severed minerals in approximately 21,485 acres located in Morrison, Itasca and St. Louis Counties, Minnesota, which interests it acquired by purchase and by reservation.

7. Plaintiff St. Croix Lumber Company is a corporation duly incorporated under the laws of the State of Minnesota, having its place of business at 1102 Minnesota Building, St. Paul, Minnesota. It has an undivided fractional ownership interest in severed minerals in approximately 23,400 acres located in St. Louis and Lake Counties, Minnesota, which interests it acquired by purchase and by reservation.

8. Plaintiff Torinus Company is a corporation duly incorporated under the laws of the State of Minnesota, having its principal place of business at 1102 Minnesota Building, St. Paul, Minnesota. It has an undivided fractional ownership interest in severed minerals in approximately 120 acres located in St. Louis County, Minnesota, which interests it acquired by reservation.

9. Plaintiff Northwestern National Bank of Minneapolis is a National Banking Association, having its principal place of business at 7th and Marquette, Minneapolis, Minnesota. It has, as Trustee under various instruments of truth, a fractional ownership interest in severed minerals in approximately 15,080 acres located in St. Louis, Hubbard, Morrison, Crow Wing, Itasca, and Aitkin Counties, Minnesota, which interests it acquired by inheritance, by conveyance into trust and by reservation.

10. Plaintiff Boise Cascade Corporation is a corporation duly incorporated under the laws of the State of Delaware and duly certified and authorized to do business within the State of Minnesota pursuant to the requirements set forth in Minnesota Statutes, Chapter 303. It has its principal place of business at 1 Jefferson Square, Boise, Idaho.

It claims an undivided fractional ownership interest in severed minerals in approximately 17,680 acres located in Koochiching, St. Louis, Itasca, Lake of the Woods, and Cook Counties, Minnesota, which interests it acquired as a result of the merger of Minnesota and Ontario Paper Company into plaintiff company on January 29, 1965, and also by reservation. It failed to file statements of severed mineral interest as to these 17,680 acres within the period specified in Minnesota Statutes, Section 93.52 (1974).

11. Plaintiff Dr. Ernest A. Goff, Jr., resides at 2680 Warm Springs Road, Glen Ellen, California. He has an undivided fractional ownership interest in severed minerals in approximately 1,880 acres located in Itasca and St. Louis Counties, Minnesota, which interests he acquired by inheritance.

12. Plaintiff First National Bank of Minneapolis is a National Banking Association, having its principal place of business at 120 South Sixth Street, Minneapolis, Minnesota. It has, as Trustee under various instruments of trust, an undivided fractional ownership interest in severed minerals in approximately 4,209 acres located in Itasca, St. Louis, Todd, Crow Wing, Cass, Ottertail, Aitkin and Meeker Counties, Minnesota, which interests it acquired by inheritance, by conveyance into trust and by reservation.

13. Plaintiff Cloquet Lumber Company is a corporation duly incorporated under the laws of the State of Iowa, having its place of business at 620 Walnut Street, Cloquet, Minnesota, and is duly certified and authorized to do busi-

ness in Minnesota pursuant to the requirements of Minnesota Statutes, Chapter 303. It has an undivided fractional ownership interest in severed minerals in approximately 81,208 acres located in Cook, Lake and St. Louis Counties, Minnesota, which interests it acquired by reservation.

14. Plaintiff Burlington Northern, Inc., is a corporation duly incorporated under the laws of the State of Delaware, having its principal place of business in Minnesota at 176 East Fifth Street, St. Paul, Minnesota, and is duly certified and authorized to do business in Minnesota pursuant to the requirements of Minnesota Statutes, Chapter 303. It has an undivided fractional ownership interest in severed minerals in approximately 237,689 acres located in forty-nine (49) counties of the State of Minnesota, which interests it acquired principally by reservation.

15. Plaintiff Alworth Land and Improvement Company is a corporation duly incorporated under the laws of the State of Minnesota, having its principal place of business at 1605 Alworth Building, Duluth, Minnesota. It has an undivided fractional ownership interest in severed minerals in approximately 10,520 acres located in Aitkin, St. Louis, Itasca, and Lake Counties, Minnesota, which interests it acquired principally as contribution of capital to the corporation, but to a lesser extent also by reservation.

16. Plaintiff United States Steel Corporation is a corporation duly incorporated under the laws of the State of Delaware, having its principal place of business in Minnesota at Missabe Building, Duluth, Minnesota. It is duly certified and authorized to do business within the State of

Minnesota pursuant to the requirements set forth in Minnesota Statutes, Chapter 303. It has an undivided fractional ownership interest in severed minerals in approximately 721,640 acres located in nineteen (19) counties of the State of Minnesota, which interests it or its predecessor or merged corporations acquired substantially, but not exclusively, by exception (reservation).

17. Plaintiff Paul Andresen personally owns approximately 80 acres of severed mineral interests in St. Louis County and has an interest as a beneficiary of the Charles d'Autremont Trust in approximately 1160 acres of severed mineral interests in St. Louis and Lake Counties. These interests were all acquired by inheritance. Neither plaintiff Paul Andresen nor the d'Autremont Trust filed statements of severed mineral interest within the period specified in Minnesota Statutes, Section 93.52 (1974).

18. With the exception of certain of the interests of plaintiff James T. M. Prest, the interests of the plaintiffs as described in findings 1 to 17 were owned by them on and prior to December 31, 1973.

19. The severance of minerals is a statewide phenomenon. At the time of the trial hereof, approximately 11,725 statements of severed mineral interest had been filed in 83 of the State's 87 counties. (Figures were not available for Crow Wing, Fillmore, Kandiyohi and Wadena Counties.) These statements represent approximately 2.8 million acres of severed mineral interests, slightly over one million acres of which are located in St. Louis County alone.

20. It appears that the acreage of severed mineral interests for which statements have been filed may be substantially less than the total acreage of existing mineral interests in Minnesota. The evidence presented at trial regarding the magnitude of the severed mineral interest phenomenon in northern Minnesota affirms the following description contained in the amicus brief prepared by attorney W. K. Montague for the case of Kangas-Jacobson Dairy, Inc. v. Lloyd-Smith, 241 Minn. 317, 62 N.W. 2d 915 (1954), which description is hereby incorporated herein as a finding of fact:

They [Severed mineral interests] are of wide extent: the entire length of the Mesabi Range from Gunflint Lake . . . down to Grand Rapids, to a width of probably twenty miles from the iron formation, is blanketed with mineral reservations; on each side of the east end of the Mesabi Range through Lake and Cook counties down to Lake Superior, a distance of fifty to sixty miles, nearly every forty has a mineral reservation. Large areas in Carlton and Crow Wing Counties are similarly covered. While we are not familiar with details of mineral reservations in other Northern Minnesota counties, we understand they are not uncommon. Every city and village on the Mesabi Range from Aurora through Eveleth, Virginia, Chisholm, Hibbing, down to Coleraine, is located on lands subject to mineral reservations. Every home, store, factory and farm in that area is subject thereto.

Amicus Brief of W. K. Montague at 9.

The existence of significant numbers and areas of severed mineral interests is not limited to the northern portion of the State, and nearly every county contains some such interests.

21. For at least 62 years, since the decision in Washburn v. Gregory, 125 Minn. 491, 147 N.W. 706 (1914), and until the enactment of Laws of Minnesota 1973, Chapter 650, Article 20, Section 3, (Minn. Stat. §273.13, subd. 2d (1974)), the vast majority of severed mineral interests have escaped property taxation altogether. The interests owned by the plaintiffs are no exception. In 1974 plaintiffs paid ad valorem property taxes on approximately 3,212 of their approximately 1,262,664¹ acres of severed mineral interests. The majority of the 3,212 acres subject to such taxation was taxed at \$1.00 per acre under Minnesota Statutes, Section 298.26 (1974). In 1974, plaintiff United States Steel Corporation paid \$2,885.32 in ad valorem property taxes on its 721,640 acres of severed minerals. Of this, \$607.20 was attributable to the \$1.00 per acre tax on unmined taconite imposed by Minnesota Statutes, Section 298.26 (1974).

22. The above-described exemption of severed mineral interests from ad valorem property taxation was the result, not of any statutory or constitutional exemption, but of the practical impossibility of applying traditional ad valorem property taxation methods to such interests. This, in turn, has resulted from the two following facts:

¹This includes plaintiff Andresen's beneficial interest in 1160 acres of severed minerals under the d'Autremont Trust.

a. Identification of the existence and ownership of severed mineral interests by taxing authorities, in the absence of the statements required by Minnesota Statutes, Section 93.52, Subdivision 2 (1974), "requires title, searches which are extremely burdensome, and where no public tract index is available, prohibitively expensive" (Minn. Stat. §272.039 (1974)); and

b. Even if identified, most severed mineral interests cannot be assessed for ad valorem property tax purposes because:

(1) The value of the mineral in the ground can only be determined by prohibitively expensive exploration such as drilling and drill core analysis; and

(2) Data currently available to assessors on sales and exchanges of the property rights in mineral estates (i.e., severed mineral interests) is very limited. Therefore, in most cases such available data is insufficient to permit the derivation of market values for individual severed mineral interests from the sales prices or values of comparable interests.

23. The evidence presented at trial demonstrates that following the decision in Washburn v. Gregory, *supra*, severed mineral interests were commonly created primarily to escape property taxation. The court again finds that Mr. Montague correctly described the situation at pages 10-11 of his amicus brief in Kangas-Jacobson Dairy, Inc. v. Lloyd-Smith, *supra*:

In a substantial number of cases the reservations [severed mineral interests] were created as a result of the tax laws, and do not represent arm's length negotiations between parties . . . They represent deliberate attempts to arrange a transaction under which the grantor could retain for generations his speculative interest in the minerals without carrying charges, and, if merchantable ore should ever be discovered, could reacquire the surface without cost.

24. 140,000 to 145,000 acres of the 721,640 acres of severed mineral interests owned by plaintiff United States Steel Corporation were created in 1938 when the Duluth and Iron Range Railroad, a wholly-owned subsidiary of said plaintiff, deeded the surface to two trustees, one an officer or employee of Oliver Iron Mining Corp., another wholly owned subsidiary of United States Steel Corporation, and the other an employee of the railroad. The railroad retained ownership of the minerals (i.e., "severed" minerals) in this transaction by reservation. The railroad subsequently conveyed the mineral interests to two other individuals who shortly thereafter conveyed them in turn to Oliver Iron Mining Company. The trustees to whom the surface had been conveyed subsequently allowed these surface interests to forfeit for nonpayment of taxes. Oliver Iron Mining Company thereafter merged with United States Steel Corporation.

The Court concludes that the predominant purpose of this series of transactions was to avoid ad valorem property taxes on 140,000 to 145,000 acres of land which was primarily valuable to Oliver Iron Mining Company, and

its successor United States Steel Corp., for its mineral potential.

25. Where taxable real property includes the rights to both surface and mineral interests (estates), the assessed valuation, and hence the property tax levied, reflects the value, if any, assigned by market forces to the totality of these rights. Plaintiffs have failed to demonstrate that such "unsevered" mineral rights have, like severed mineral interests, escaped ad valorem property taxation.

26. There is at least some potential for the discovery of minerals in economic quantities and grades everywhere in Minnesota. Every mineral interest has some value as a property right regardless of its location, although the value of an interest in one part of the State may vary from that in another. Certain of the mineral interests owned by plaintiffs appear to be enormously valuable.

27. The rate of the tax imposed by Minn. Stat. §273.13, subd. 2d (1974), is nominal. An ad valorem tax of \$.25 per acre would result from an assessed valuation of approximately \$2.50 per acre using the 1974 statewide average mill rate of 99.15 or approximately \$1.90 per acre using the 1974 St. Louis County average mill rate of 128.74.⁹

28. The average ad valorem property tax on 40 acres of undeveloped rural land in St. Louis County in 1975 was slightly over \$18.00. However, in 1975 (for 1976 taxes), the assessor doubled the value of most lands in this

⁹The Court takes judicial notice of the average mill rates reported by the Department of Revenue, State of Minnesota, in *Property Tax in Minnesota*, Property Tax Bulletin No. 3, Table 27 at 157-158 (1974).

category. Because of statutory limitations the full effect of this increase on property taxes will not be felt until 1979, but at that time, if the current rate of increase continues, the average ad valorem property tax on 40 acres of undeveloped rural land will be approximately \$38.

29. Considered in the context of mineral taxation generally, Minnesota Statutes, Section 273.13, Subdivision 2a (1974), establishes a lower limit on the taxation of severed mineral interests, above which other alternative taxes vary essentially according to value. As such, it is not dissimilar in purpose to Minnesota Statutes, Section 298.26 (1974), which establishes an upper limit on the taxation of taconite and iron sulphide ores.

30. Plaintiffs have failed to demonstrate that Minnesota Statutes, Section 93.52 or 93.55, or any other portion of Laws of Minnesota 1969, Chapter 829, as amended by Laws of Minnesota 1973, Chapter 650, Article 20, is so vague and indefinite as to make it impossible for the courts to adopt a reasonable construction which is consistent with the legislative intent.

31. The evidence presented at trial demonstrates that the ownership condition of severed mineral interests in the State has been, in the absence of the statement required by Minnesota Statutes, Section 93.52 (1974), extremely obscure. As Mr. Montague correctly put it at page 10 of his amicus brief in Kangas-Jacobson Dairy, Inc. v. Lloyd-Smith, supra:

... In a great many cases no attempt has been made to preserve good title during the probate of estates,

etc., as a result of which locating individual owners of the minerals is sometimes a job for a detective agency.

32. The ownership of severed mineral interests has become more and more fractionalized with the passage of time. In some cases individual interests may amount to less than 0.5%, and fractional interests with denominators such as 18809 or 37618 are not uncommon.

33. The obscurity and fractionalization of severed mineral interests has rendered the identification of severed mineral interests in this state generally expensive, inconvenient, and in some cases impossible, and has impeded mineral development.

34. The filing requirements contained in Minnesota Statutes, Section 93.52 (1974), are reasonably calculated to reduce the difficulty, expense, inconvenience and uncertainty of identifying severed mineral interests and therefore serve a proper public purpose.

35. Few statements of severed mineral interest were filed pursuant to Minnesota Statutes, Section 93.52, until the penalty for failing to file was increased by Laws of Minnesota 1973, Chapter 650, Article 20, Section 6.

36. Considered apart from the forfeiture process, the forfeiture of severed mineral interests as a penalty for failure to file the required statement is reasonably necessary to induce owners of severed mineral interests to file the statements required by Minnesota Statutes, Section 93.52 (1974).

CONCLUSIONS OF LAW

1. The plaintiffs are persons whose rights and status are affected by Laws of Minnesota, 1969, Chapter 829, as amended and supplemented by Laws of Minnesota, 1973, Chapter 650, Article 20, within the meaning of Minnesota Statutes, Chapter 555 (1974).

2. The legislature, in Laws of Minnesota 1973, Chapter 650, Article 20, Section 1 (Minn. Stat. §272.039 (1974)), has clearly and soundly stated the reasons underlying and justifying the taxation of severed mineral interests in the manner set forth in said Article 20.

3. The classification and treatment, for tax purposes, of severed mineral interests separately and apart from unsevered mineral interests as well as all other interests in real property violate neither the equal protection provisions of the State and Federal constitutions (Minn. Const. Art. 1, §2;³ U. S. Const. Amend. XIV, §1) nor the State constitutional prohibition against special legislation (Minn. Const. Art. 12, §1).

4. The taxation of severed mineral interests in the manner and at the rates provided by Minnesota Statutes, Section 373.13, Subdivision 2a (1974), violates neither the uniformity clause of the State constitution (Minn. Const. Art. 10, §1), nor the equal protection or due process clause of the Federal constitution (U. S. Const. Amend. XIV, §1).

³All citations to the Minnesota Constitution are to the amended and restructured version adopted on November 5, 1974.

5. The provisions of Minnesota Statutes, Section 93.52, Subdivision 2 (1974), are not void for vagueness or indefiniteness under the due process clause of either the State or the Federal constitution (Minn. Const. Art. 1, §7; U.S. Const. Amend. XIV, §1).

6. The forfeiture provisions of Minnesota Statutes, Section 93.55 (1974), constitute a reasonable penalty for failure to comply with the filing requirements and as such are not subject to the just compensation requirements of the State or Federal constitution (Minn. Const. Art. 1, §13; U. S. Const. Amend. XIV, §1).

7. The forfeiture provisions of Minn. Stat., Section 93.55 (1974), do not operate to impair the obligation of contract within the meaning of Article 1, Section 11 of the Minnesota Constitution or Article I, Section 10, of the United States Constitution.

8. However, notwithstanding conclusions 6 and 7, the forfeiture process established by Minnesota Statutes, Section 93.55 (1974), violates the due process clauses of the State and Federal constitutions (Minn. Const. Art. 1, §7 and U. S. Const. Amend. XIV, §1), by failing to provide owners of severed mineral interests with adequate notice and an opportunity to be heard prior to depriving them of their property.

9. By virtue of conclusion 8, plaintiffs are entitled to a judgment declaring the forfeiture provisions of Minnesota Statutes, Section 93.55 (1974), to be unconstitutional and void under Section 1 of the Fourteenth Amendment to the United States Constitution and Article 1, Section 7, of the Minnesota Constitution.

10. By virtue of conclusions 8 and 9, plaintiffs are entitled to a judgment enjoining and restraining defendant Robert L. Herbst and his successors as Commissioner of Natural Resources of the State of Minnesota from claiming or asserting an ownership interest in plaintiffs' mineral interests by reason of the forfeiture of ownership thereof to the State of Minnesota pursuant to Minnesota Statutes, Section 93.55 (1974).

11. The forfeiture provisions of Laws of Minnesota, 1969, Chapter 829, Section 4, as amended by Laws of Minnesota, 1973, Chapter 650, Article 20, Section 6 (Minn. Stat. §93.55 (1974)), are severable from the remaining provisions of the two acts just cited under both Laws of Minnesota, 1973, Chapter 650, Article 20, Section 8, and the general principles governing the construction of statutes contained in Minnesota Statutes, Section 645.20 (1974). Therefore, these remaining provisions are valid and enforceable despite the invalidity of the forfeiture provisions of Section 93.55.

12. Defendants are entitled to a judgment declaring Laws of Minnesota, 1969, Chapter 829, as amended and supplemented by Laws of Minnesota, 1973, Chapter 650, Article 20, to be in all respects valid and enforceable under the Constitution of the United States and the Constitution of the State of Minnesota, except for the forfeiture provisions of Section 6 of the 1973 amendments (Minn. Stat. §93.55 (1974)).

The attached memorandum shall be considered a part hereof.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 14th day of June, 1976.

/s/ HAROLD W. SCHULTZ
Judge of the District Court

(Title of Cause.)

MOTION

Plaintiffs move the Court for an Order amending its Findings of Fact, Conclusions of Law, and Order for Judgment handed down in this matter on June 14, 1976, so as to conform with the Findings of Fact, Conclusions of Law, and Order for Judgment attached hereto as Exhibit A.

Said Motion is made on the files, exhibits, minutes of the Court, and all other records and proceedings herein.

HANFT, FRIDE, O'BRIEN & HARRIES
Attorneys for Plaintiffs
1200 Alworth Building
Duluth, Minnesota 55802
(218) 722-4766

NOTICE OF MOTION

TO: DEFENDANTS ABOVE NAMED and C. PAUL FARACI, PHILIP J. OLFELT, STEVEN G. THORNE, LEO McDONNELL, and KENT TUPPER, their attorneys:

YOU WILL PLEASE TAKE NOTICE, that the Motion above stated will be brought on for hearing before

Judge Harold W. Schultz of the District Court of Ramsey Court, Minnesota in the Court House in the City of St. Paul, State of Minnesota on the 8th day of July, 1976 at 9:30 a.m. or as soon thereafter as counsel may be heard.

HANFT, FRIDE, O'BRIEN & HARRIES
Attorneys for Plaintiffs
1200 Alworth Building
Duluth, Minnesota 55802
(218) 722-4766

EXHIBIT A

(Title of Cause.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

File No. 400979

The above-entitled matter came on for trial without a jury, before the undersigned, on October 27, 28, 29 and 30, 1975, in Courtroom 1315, Ramsey County Courthouse, St. Paul, Minnesota.

Edward T. Fride, Esquire, Tyrone P. Bujold, Esquire and Paul J. Lokken, Esquire, of the firm of Hanft, Fride, O'Brien & Harries, 1200 Alworth Building, Duluth, Minnesota, appeared representing the plaintiffs.

C. Paul Faraci, Esquire, Deputy Attorney General, Philip J. Olfelt, Esquire, Assistant Attorney General, and Steven G. Thorne, Esquire, Special Assistant Attorney General, 375 Centennial Building, St. Paul, Minnesota, appeared representing the State defendants.

Leo McDonnell, Esquire, Assistant St. Louis County Attorney, Duluth, Minnesota, appeared representing defendant Andrew Korda, Individually and as Auditor for St. Louis County, Minnesota.

Kent Tupper, Esquire, of the firm of Peterson, Tupper & Smith, Walker, Minnesota, appeared representing defendant Minnesota Chippewa Tribe.

At trial the parties submitted a stipulation of facts which is set forth, so far as deemed relevant, as Findings of Facts Numbers 1-16.

Upon the arguments and briefs of counsel and upon all the evidence, testimony, files, records and proceedings herein, the Court makes the following findings of fact, conclusions of law and order for judgment:

FINDINGS OF FACT

1. Plaintiff M. Allison Contos resides at 129 West Anoka Street, Duluth, Minnesota. She is a housewife and is not otherwise employed outside the home. She has an undivided fractional ownership interest in severed minerals, i.e., an interest in minerals owned separately and apart from the fee title to the surface of real property, in approximately 761 acres located in St. Louis, Cook, and Crow Wing Counties, Minnesota, which interests she acquired by gift and by inheritance.

2. Plaintiff Barbara Johnson resides at 4387 Midway Road, Duluth, Minnesota. She is a housewife and is not otherwise employed outside the home. She has an undivided fractional ownership interest in severed minerals in approximately 761 acres located in St. Louis, Cook, and

Crow Wing Counties, Minnesota, which interests she acquired by gift and by inheritance.

3. Plaintiff Daniel S. Cash resides at 2747 Dellwood Avenue North, Roseville, Minnesota. He is employed as purchasing Agent at Batzli Electric Company, having its place of business at 1807 South First Street, Minneapolis, Minnesota. He has an undivided fractional ownership interest in severed minerals in approximately 761 acres located in Cook, St. Louis and Crow Wing Counties, Minnesota, which interests he acquired by gift and by inheritance.

4. Plaintiff Dorothy M. Crosby resides at 600 West Superior Street, Duluth, Minnesota. She is retired and not employed. She has individually, and as Executrix of the Estate of John Q. A. Crosby, an undivided fractional ownership interest in severed minerals in approximately 33,230 acres located in Cass, Cook, Crow Wing, Itasca, Koochiching, and Lake Counties, Minnesota. She acquired the major portion of these interests by inheritance and the remainder by gift.

5. Plaintiff James T. M. Prest resides at 2317 Woodland Avenue, Duluth, Minnesota. He is an attorney at law with his place of business located at 1000 Torrey Building, Duluth, Minnesota. He has an undivided fractional ownership interest in severed minerals in properties located in Beltrami, Pine, Grant, Clay, Wadena, Polk, Mille Lacs, Wilkin, Becker, Hubbard, Douglas, Todd, Pennington, Ottertail, Rosseau, Morrison, Marshall, St. Louis, Itasca and Koochiching Counties, Minnesota, which interests he acquired by exchange, by purchase and as compensation for legal services.

6. Plaintiff Day Development Company is a corporation duly incorporated under the laws of the State of Minnesota, having its place of business at 1000 First National Bank Building, Minneapolis, Minnesota. It has an undivided fractional ownership interest in severed minerals in approximately 42,970 acres located in Morrison, Itasca and St. Louis Counties, Minnesota, which interests it acquired by purchase and by reservation.

7. Plaintiff St. Croix Lumber Company is a corporation duly incorporated under the laws of the State of Minnesota, having its place of business at 1102 Minnesota Building, St. Paul, Minnesota. It has an undivided fractional ownership interest in severed minerals in approximately 23,400 acres located in St. Louis and Lake Counties, Minnesota, which interests it acquired by purchase and by reservation.

8. Plaintiff Torinus Company is a corporation duly incorporated under the laws of the State of Minnesota, having its principal place of business at 1102 Minnesota Building, St. Paul, Minnesota. It has an undivided fractional ownership interest in severed minerals in approximately 120 acres located in St. Louis County, Minnesota, which interests it acquired by reservation.

9. Plaintiff Northwestern National Bank of Minneapolis is a National Banking Association, having its principal place of business at 7th and Marquette, Minneapolis, Minnesota. It has, as Trustee under various instruments of trust, a fractional ownership interest in severed minerals in approximately 14,360 acres located in St. Louis, Hubbard,

Morrison, Crow Wing, Itasca, and Aitkin Counties, Minnesota, which interests it acquired by inheritance, by conveyance into trust and by reservation.

10. Plaintiff Boise Cascade Corporation is a corporation duly incorporated under the laws of the State of Delaware and duly certified and authorized to do business within the State of Minnesota pursuant to the requirements set forth in Minnesota Statutes, Chapter 303. It has its principal place of business at 1 Jefferson Square, Boise, Idaho. It has an undivided fractional ownership interest in severed minerals in approximately 17,680 acres located in Koochiching, St. Louis, Itasca, Lake of the Woods, and Cook Counties, Minnesota, which interests it acquired as a result of the merger of Minnesota and Ontario Paper Company into plaintiff company on January 29, 1965.

11. Plaintiff Dr. Ernest A. Goff, Jr., resides at 2680 Warm Springs Road, Glen Ellen, California. He has an undivided fractional ownership interest in severed minerals in approximately 1,880 acres located in Itasca and St. Louis Counties, Minnesota, which interest he acquired by inheritance.

12. Plaintiff First National Bank of Minneapolis is a National Banking Association, having its principal place of business at 120 South Sixth Street, Minneapolis, Minnesota. It has, as Trustee under various instruments of trust, an undivided fractional ownership interest in severed minerals in approximately 4,209 acres in Itasca, St. Louis, Todd, Crow Wing, Cass, Ottertail, Aitkin and Meeker Counties, Minnesota, which interests it acquired by decree, by deed and by reservation.

13. Plaintiff Cloquet Lumber Company is a corporation duly incorporated under the laws of the State of Iowa, having its place of business at 620 Walnut Street, Cloquet, Minnesota, and is duly certified and authorized to do business in Minnesota pursuant to Minnesota Statutes, Chapter 303. It has an undivided fractional ownership interest in severed minerals in approximately 81,208 acres located in Cook, Lake and St. Louis Counties, Minnesota, which interests it acquired by reservation.

14. Plaintiff Burlington Northern, Inc., is a corporation duly incorporated under the laws of the State of Delaware, having its principal place of business in Minnesota at 176 East Fifth Street, St. Paul, Minnesota, and is duly certified and authorized to do business in Minnesota pursuant to the requirements of Minnesota Statutes, Chapter 303. It has an undivided fractional ownership interest in severed minerals in approximately 237,689 acres located in forty-nine (49) counties of the State of Minnesota, which interests it acquired principally by reservation.

15. Plaintiff Alworth Land and Improvement Company is a corporation duly incorporated under the laws of the State of Minnesota, having its principal place of business at 1605 Alworth Building, Duluth, Minnesota. It has an undivided fractional ownership interest in severed minerals in properties located in St. Louis, Itasca, and Lake Counties, Minnesota, which interests it acquired principally as contribution of capital to the corporation, and in a limited number of cases, by reservation.

16. Plaintiff United States Steel Corporation is a corporation duly incorporated under the laws of the State of

Delaware, having its principal place of business in Minnesota at Missabe Building, Duluth, Minnesota. It is duly certified and authorized to do business within the State of Minnesota pursuant to the requirements set forth in Minnesota Statutes, Chapter 303. It has an undivided fractional ownership interest in severed minerals in approximately 721,640 acres located in nineteen (19) counties in the State of Minnesota. It acquired these interests through the merger of various predecessor corporations.

17. Plaintiff Paul Andresen personally owns approximately 80 acres of severed mineral interests in St. Louis County and has an interest as a beneficiary of the Charles d'Autremont Trust in approximately 1160 acres of severed mineral interests in St. Louis and Lake Counties. These interests were all acquired by inheritance.

18. Each of the plaintiffs owned an interest in severed minerals prior to December 31, 1973.

19. In 1973 the Minnesota Legislature enacted Article XX of Chapter 650. This enactment provided for a property tax on mineral interests at a flat rate, 25¢ per acre, regardless of the value of the interest taxed. Owners of fractional interests were to pay a pro rata share of the 25¢ per acre, but the annual minimum tax on any mineral interest was \$2.00. No such similar tax was enacted pertaining to minerals not severed from the surface. Additionally, the Act required that every owner of a fee simple interest in severed minerals was required to file for record with the Register of Deeds, or if appropriate, the Registrar of Titles, in the county in which the mineral interest is located, a verified statement including his name, his address,

his interest in the minerals, and a legal description of the property, together with the book and page or document number of the instrument by which the minerals were "created or acquired". MSA §93.52, Subd. 2. If one failed to file such a statement before January 1, 1975, as to any interest owned on or before December 31, 1973, his ownership in the property automatically, and without any notice or opportunity for a hearing, forfeited permanently to the State of Minnesota. MSA §93.55. The statute provided for no redemption privilege for interests which have ostensibly forfeited under the statute. If property is forfeited to the state for failure to file a statement, the owner within six years of the date of forfeiture may commence a lawsuit against the Commissioner of Natural Resources, not to recover his interests, but to attempt to prove and recover the lesser of the fair market value of his mineral interests at the time of forfeiture or at the time of trial.

20. The evidence presented at trial established that there is no discernible difference between severed and unsevered mineral interests and both severed and unsevered interests may exist in the same tract. Severed minerals require no greater governmental service than do unsevered minerals, severed minerals have no inherent value greater or lesser than unsevered minerals, there is no difference in the intrinsic nature of minerals which can be related to their status of being either severed or unsevered from the surface, there is no difference between severed and unsevered minerals as to the use to which they are put, no difference as to the cost of developing severed and unsevered minerals, and no difference as to the ability of the owners of such interests to pay taxes.

21. Unsevered mineral interests have gone untaxed to the same extent as severed mineral interests. The testimony established, for example, that the St. Louis County Assessors specifically take into consideration mineral values in making their assessments only in the Mesabi and Vermilion iron formations. They do not specifically take into consideration mineral values in any other area of the county, including the Duluth Complex, and the so-called Greenstone Belts, both areas containing potential for economic mineralization. On the basis of the testimony, it is reasonable to believe that this practice exists throughout the state.

22. There is no "practical difficulty" pertaining to the valuation of severed mineral interests for ad valorem tax purposes which does not also pertain to unsevered mineral interests.

23. The potential value of severed mineral interests varies on a spectrum ranging from worthless to valuable. Until explored and the existence of useable minerals is established, severed mineral interests possess little or no actual value. However, the potential value of severed mineral interests will vary, for example, with respect to the probability of occurrence of a specific type of mineral, the geological environment of the severed mineral interest and, in the light of the probability of occurrence of minerals, the cost of its extraction, distance from transportation facilities, the distance from a possible plant site and numerous other factors. Severed mineral interests located in different parts of the state may have different values. Severed mineral interests located in contiguous tracts often vary dramatically in value.

24. The vast majority of all severed mineral interests have no discernible market value. Consequently, the tax as imposed by the Act will most often exceed the value of the interests taxed. The testimony established, for example, that interests recently purchased by James T. Prest for less than 5¢ an acre will be taxed under the Act at a rate of 25¢ per acre. In 1974 the statewide average mill rate (exclusive of special assessments) was 99.15. A 25¢ per acre ad valorem tax would result from an assessed value of approximately \$2.50 per acre, which, in turn, would result from a market value of approximately \$5.85 per acre. (MSA §273.13, Subd. 9, provides that property of the class which would include most severed mineral interests is to be assessed at 43% of its market value). Thus, if these interests of Mr. Prest were taxed at a rate of 25¢ per acre under the normal ad valorem system, it would have had to have resulted from an assessed value at least fifty times as great and a market value at least 117 times as great as their actual value as measured by a recent market sale. Additionally, the interests of Dorothy Crosby under the Act would be taxed at a yearly rate many times in excess of their value as judged by a recent appraisal.

25. The evidence clearly established that in many cases the tax under the Act on minerals alone will exceed the tax on the surface of the same property. Additionally, in many cases the tax on a severed mineral interest in a forty acre tract will exceed the property tax on both surface and minerals in numerous other forty acre tracts.

26. The tax as imposed under the Act is in no sense nominal, and in many cases will invoke extreme hardship.

The evidence established, for example, that the application of the Act to the interests owned by Dorothy Crosby would result in a tax five times as great as her yearly income. The magnitude of the tax in and of itself will in numerous cases have the effect of promoting forfeitures of severed mineral interests because of inability to pay the tax.

27. No severed mineral interest enjoys any kind of exemption from taxation. As in the case of unsevered mineral interests, if and when the existence of minerals is discovered the interest becomes subject to one of the following: the general ad valorem tax, the ad valorem tax on reserves of unmined taconite and iron sulfides as provided for under MSA §298.26, or one of the so-called "in lieu taxes" (i.e., taxes imposed in lieu of the ad valorem property taxes). The revenue from these taxes has been one of the mainstays of support of both the state and local units of government.

28. There was no showing that minerals were originally severed from the surface merely and solely for the purpose of avoiding taxation. To the contrary, the evidence confirmed that the practice was adopted to enable owners to obtain a fair value for the sale of the surface, but still retain ownership of the minerals for which no value could be established.

29. The registration provisions of these statutes are so vague and indefinite that no clear direction was provided to those owners attempting in good faith to make a filing consistent with the statute in order to avoid forfeiture. The

language of these provisions lent itself to many equally reasonable, but mutually exclusive, interpretations as to certain requirements specified by the Act as necessary prerequisites to a valid registration. In many cases, the information required by the Act was not available, or if available, only with extreme hardship. Considerable confusion existed even among those with training and experience as to the proper method of registration. The evidence showed that many statements filed, for example, with the Cook County Register of Deeds apparently do not comply with the statute. In addition, forms prepared by Clark Ilse, St. Louis County Register of Deeds, and Miller Davis Company were sold to and used by thousands of owners of severed mineral interest owners for use in connection with the registration of their interests. These forms may not conform with the registration requirements of the Act.

30. The provisions of the statute pertaining to the imposition of the tax, particularly those provisions relating to the application of the \$2.00 minimum annual tax and relating to the apportionment of the tax, are so vague and indefinite as to preclude uniform interpretation and enforcement of the Act by appropriate officials.

31. The evidence at trial established that the registration provisions of the statute pertaining only to severed mineral interests serves no reasonable purpose. The legislative findings incorporated within Section 1 of the Act, (MSA §272.039) indicate that these provisions are necessary to clear obscure titles to severed mineral interests thereby removing an obstacle to the development of these interests. The evidence showed, however, that the titles to

severed mineral interests are no more or no less complex than titles to unsevered interests. Further, the evidence showed that rather than alleviating title complexity and promoting development of mineral interests, the registration provisions of the statute, because of their complexity and vagueness, will have the opposite affect.

32. Plaintiff United States Steel Corporation, though it conscientiously tried to register all of its severed mineral interests pursuant to the Act, failed, through inadvertence, to register a substantial number of acres of its interests.

33. Plaintiff Paul Andresen had no actual notice of the registration requirement. Consequently, he made no attempt to register pursuant to the Act either his interests or the interests of the d'Autremont Trust.

34. The testimony established that the vast majority of severed mineral interests within the state of Minnesota ostensibly have forfeited to the state of Minnesota under the Act.

35. The evidence showed that the forfeiture of severed mineral interests for mere failure to file a registration statement as required under the Act is unduly harsh and punitive, and serves no legitimate public purpose, particularly in view of the tenuous need for the registration provisions of the statute, compliance with which the forfeiture provisions of the Act were intended to enforce.

36. No justification for the forfeiture provisions of the Act can be derived from the fact that few statements of severed mineral interests were filed pursuant to Laws of Minnesota, 1969, Chapter 829 (MSA §93.52), until the

penalty for failing to file was increased by Laws of Minnesota 1973, Chapter 650, Article XX, Section 6. The registration deadline under the statute as it existed had not passed prior to its amendment, and therefore there is no way of knowing whether the penalty as provided for under the prior statute for failure to file was effective.

37. The evidence showed that the forfeiture provisions of the Act were enacted not principally for the purpose of encouraging filings under the Act, but rather for the purpose of promoting forfeiture of severed mineral interests and the accumulation of such interests by the state.

CONCLUSIONS OF LAW

1. The plaintiffs are persons whose rights and status are affected by Laws of Minnesota, 1969, Chapter 829, as amended and supplemented by Laws of Minnesota, 1973, Chapter 650, Article XX, within the meaning of Minnesota Statutes, Chapter 555 (1974).

2. The tax as imposed under Sections 2 and 3 of the Act violates the equal protection provisions of the State and Federal Constitution (Minn. Const. Art. I, Sec. 2; U.S. Const. Amend. XIV, Sec. 1) and the State Constitution prohibition against special legislation (Minn. Const. Art. XII, Sec. 1), because (a) the taxation of severed mineral interests, with no similar treatment of unsevered mineral interests is improper, (b) a flat rate tax on real property, without regard to the value of the property interests, is improper, (c) the tax is discriminatory, (d) the tax exceeds the value of the interests taxed, and (e) the Act permits

the taxation of severed mineral interests on a basis totally different from that upon which all other interests in real property are taxed.

3. Section 5 of the Act, which sets forth the information which is required to be included in the registration statement, is so vague and indefinite as to provide no clear or reasonable direction to those owners of severed mineral interests attempting to construct and file registration statements in compliance with the statute, therefore placing them in jeopardy of being deprived of property without due process of law in violation of the State and Federal Constitutions (Minn. Const. Art. I, Sec. 7. U.S. Const. Amend. XIV, Sec. 1).

4. Section 3 of the Act imposing the tax is so vague and indefinite as to preclude uniform interpretation and application of the tax by appropriate officials, thereby violating plaintiffs' right to equal protection under the State and Federal Constitution (Minn. Const. Art. I, Sec. 2; U.S. Const. Amend. XIV, Sec. 1) and placing them in jeopardy of being deprived of property without due process of law in violation of the State and Federal Constitution (Minn. Const. Art. I, Sec. 7; U.S. Const. Amend. XIV, Sec. 1).

5. Section 6 of the Act providing for forfeiture in the event of non-registration violates the due process clauses of the State and Federal Constitutions (Minn. Const. Art. I, Sec. 7 and U.S. Const. Amend. XIV, Sec. 1) as a result of the statute's failure to provide adequate notice with respect to the registration requirements, and as a result of the statute's complete failure to provide either notice or hearing prior to forfeiture.

6. Section 6 of the Act providing for forfeiture in the event of non-registration violates the due process clauses of the State and Federal Constitutions (Minn. Const. Art. I, Sec. 7 and U.S. Const. Amend. XIV, Sec. 1) in that the penalty of forfeiture bears no relationship to the mischief sought to be cured by the statute, and because it was enacted for the illegitimate purpose, and has had the primary effect, of promoting the forfeiture of mineral estates to the state.

7. Section 6 of the Act providing for forfeiture of a mineral interest in the event of a failure to file, operates to destroy vested property interests acquired by legally binding contract by subsequently enacted legislation, and therefore constitutes an impairment of contract in violation of Minn. Const. Art. I, Sec. 11, and U.S. Const. Art. I, Sec. 10.

8. Section 6 of the Act, providing for forfeiture of a mineral interest in the event of a failure to file, constitutes a taking of private property without just compensation, and is therefore violative of Minn. Const. Art. I, Sec. 13, and U.S. Const. Amend. V.

9. Plaintiffs are entitled to a judgment declaring Laws of Minnesota, 1973, Chapter 650, Article XX, to be in all respects invalid and unenforceable under the Constitution of the United States and the Constitution of the State of Minnesota.

The Court, having reconsidered the evidence upon Motion of Plaintiffs for Amended Findings of Fact, Conclusions of Law, and Order for Judgment, withdraws its earlier opinion issued in this matter.

LET THE JUDGMENT BE ENTERED ACCORD-
INGLY.

Dated this 14th day of June, 1976.

HAROLD W. SCHULTZ
Judge of the District Court

(Title of Cause.)

JUDGMENT AND DECREE

File No. 400979

The above entitled matter came on for trial without a jury, before the undersigned, on October 27, 28, 29 and 30, 1975, in Courtroom 1315, Ramsey County Courthouse, St. Paul, Minnesota.

Edward T. Fride, Esquire, Tyrone P. Bujold, Esquire, and Paul J. Lokken, Esquire, of the firm of Hanft, Fride, O'Brien & Harries, 1200 Alworth Building, Duluth, Minnesota, appeared representing the plaintiffs.

C. Paul Faraci, Esquire, Deputy Attorney General, Philip J. Olfelt, Esquire, Assistant Attorney General, and Steven G. Thorne, Special Assistant Attorney General, 375 Centennial Building, St. Paul, Minnesota, appeared representing the State defendants.

Leo McDonnell, Esquire, Assistant St. Louis County Attorney, Duluth, Minnesota, appeared representing defendant Andrew Korda, Individually and as Auditor for St. Louis County, Minnesota.

Kent Tupper, Esquire, of the firm of Peterson, Tupper & Smith, Walker, Minnesota, appeared representing defendant Minnesota Chippewa Tribe.

The Court having heard the testimony, considered the evidence, reviewed the file and briefs, and made and filed its Findings of Fact, Conclusions of Law and Order for Judgment, and being fully informed herein,

PURSUANT TO SAID FINDING OF FACT, CON-
CLUSIONS OF LAW AND ORDER FOR JUDGMENT,
IT IS HEREBY ADJUDGED AND DECREED that:

1. The forfeiture provisions of Minnesota Statutes, Section 93.55 (1974), are unconstitutional and void under Section 1 of the Fourteenth Amendment to the United States Constitution and Article 1, Section 7, of the Minnesota Constitution.

2. As a consequence, Robert L. Herbst and his successors as Commissioner of Natural Resources of the State of Minnesota are enjoined and restrained from claiming or asserting an ownership interest in plaintiffs' mineral interests by reason of forfeiture of ownership thereof to the State of Minnesota pursuant to Minnesota Statutes, Section 93.55 (1974).

3. Laws of Minnesota, 1969, Chapter 829, Section 4, as amended and supplemented by Laws of Minnesota 1973, Chapter 650, Article 20, is in all respects valid and enforceable under the Constitution of the United States and the Constitution of the State of Minnesota, except for the forfeiture provisions of Section 6 of the 1973 amendments (Minn. Stat. §93.55 (1974)).

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WITNESSETH, the Honorable Harold W. Schultz,
Judge of the District Court, at Saint Paul, Minnesota, this
14th day of June, 1976.

JOSEPH P. LANASA
Clerk of District Court

(Title of Cause.)

NOTICE OF APPEAL

File No. 400979

TO: C. Paul Faraci, Phillip J. Olfelt, and Stephen G.
Thorne, 375 Centennial Building, St. Paul, Minne-
sota 55145, 612/296/3294, Attorneys for Robert
L. Herbst, Lee Van, Arthur Roemer, and the State
of Minnesota

Leo M. McDonnell, St. Louis County Court House,
Duluth, Minnesota 55802, 218/727/4522, Attorney
for Andrew Korda, Individually, and as Auditor for
St. Louis County, Minnesota

Kent P. Tupper, P.O. Box 160, Walker, Minnesota
56484, 218/547/1711, and Bernard P. Becker,
2150 Summit Avenue, St. Paul, Minnesota 55105,
612/698/3885, Attorneys for Minnesota Chippewa
Tribe.

PLEASE TAKE NOTICE that the Plaintiffs above ap-
peal to the Supreme Court of the State of Minnesota from
the Judgment and Decree of the District Court entered Oc-
tober 20, 1976.

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Dated this 29th day of October, 1976.

HANFT, FRIDE, O'BRIEN & HARRIES, P.A.
By TYRONE P. BUJOLD
Attorneys for Plaintiffs
1200 Alworth Building
Duluth, Minnesota 55802
(218) 722-4766

(Title of Cause—In Supreme Court.)

NOTICE OF REVIEW

TO: Tyrone P. Bujold, Esquire,
Hanft, Fride, O'Brien & Harries
1200 Alworth Building
Duluth, Minnesota 55802

Leo M. McDonnell, Esquire
Assistant St. Louis County Attorney
St. Louis County Courthouse
Duluth, Minnesota 55802

Kent P. Tupper, Esquire
Tupper, Smith & Seck, Ltd.
P. O. Box 160
Walker, Minnesota 56484

PLEASE TAKE NOTICE, that Respondents State of
Minnesota, Robert L. Herbst, Arthur C. Roemer, and Lee
Vann, will seek review of those portions of the Judgment
and Decree of the District Court entered on October 20,
1976: .

(1) Declaring that the forfeiture provisions of Minnesota Statutes, Section 93.55 (1974), are unconstitutional and void under Section 1 of the Fourteenth Amendment to the United States Constitution and Article I, Section 7, of the Minnesota Constitution, and

(2) Enjoining Robert L. Herbst and his successors as Commissioner of Natural Resources of the State of Minnesota from claiming or asserting an ownership interest in plaintiffs'-appellants' mineral interest by reason of forfeiture of ownership thereof to the State of Minnesota pursuant to said statute.

Dated this 12th day of November, 1976.

WARREN SPANNAUS

Attorney General

State of Minnesota

C. PAUL FARACI

Deputy Attorney General

PHILIP J. OLFELT

Assistant Attorney General

/s/ STEVEN G. THORNE

Special Assistant Attorney General

Attorneys for State Respondents

375 Centennial Building

St. Paul, Minnesota 55155

Telephone: (612)-296-3294

No. 275 (1977)

Ramsey County

ALLISON CONTOS, et al.,

Appellants,

vs.

ROBERT L. HERBST, Individually, and as Commissioner of the Minnesota Department of Natural Resources, et al.,

Respondents,

ANDREW KORDA, Individually, and as Auditor for St. Louis County,

Respondent,

MINNESOTA CHIPPEWA TRIBE,

Respondent.

Kelly, J.

Took no part, Sheran, C. J.

Otis and Rogosheske, JJ.

Endorsed

Filed January 26, 1979

John McCarthy, Clerk

Minnesota Supreme Court

SYLLABUS

1. L. 1973, c. 650, art. XX [mineral registration act] which classifies severed mineral interests for purposes of taxation does not violate the uniformity clause of the Minnesota Constitution.

2. The uniformity clause does not require that real property taxes be related to value.

3. The forfeiture provisions of the mineral registration act do not violate the due process clauses of the state and Federal constitutions.

4. The procedures attending the forfeiture provisions of the mineral registration act violate the due process clause of the state and Federal constitutions because the notice provisions are inadequate and because an owner of severed mineral interest who fails to comply with the registration requirement is denied an opportunity for a hearing before the forfeiture occurs.

5. The language governing the registration requirements of the mineral registration act is not unconstitutionally vague.

Affirmed.

Heard, considered, and decided by the court en banc.

OPINION

KELLY, Justice.

In 1969 the legislature enacted Minn. St. 93.52, which required every owner of a fee simple interest in minerals which interest is owned separately from the fee title to the surface of the property [hereinafter referred to as severed mineral interests] to file for record a verified statement describing that interest with the register of deeds or the register of titles in the county where the interest is located.

Minn. St. 93.52, subd. 2. The purpose of this requirement, as stated by the legislature, was:

"* * * [T]o identify and clarify the obscure and divided condition of severed mineral interests in this state. Because the ownership condition of many severed mineral interests is becoming more obscure and further fractionalized with the passage of time, the development of mineral interests in this state is often impaired. Therefore, it is in the public interest and serves a public purpose to identify and clarify these interests." Minn. St. 9352, subd. 1.

Notice of the registration requirement was provided by publication of the legislation in legal newspapers within each county of the state and in two publications related to mining activities having nationwide circulation. Minn. St. 1971, § 93.58.

In 1973 the legislature enacted additional legislation concerning severed mineral interests which is the basis for this action. L. 1973, c. 650, art. XX hereafter referred to as mineral registration act. First, the legislature provided that anyone who failed to file the verified statement within the statutory period would forfeit that interest to the state. The only remedy for persons claiming an ownership interest at the time of forfeiture was the recovery of the fair market value of the mineral interest at the time of the forfeiture or at the time of trial, whichever is lesser. Minn. St. 93.55. The legislature found the additional legislation necessary "to provide adequate identification of [severed mineral interests] and to prevent the continued escape from taxation of obscure and fractionalized severed mineral interests." Minn. St. 272.039.

Secondly, the legislature subjected severed mineral interests not otherwise taxed to a tax of \$.25 per acre per year or \$2.00 per interest per year, whichever is greater. Minn. St. 272.04, subd. 1; 273.13, subd. 2a. In describing the basis for implementing the tax the legislature enacted the following:

"The legislature finds, for the reasons stated below, that a class of real property has been created which, although not exempt from taxation, is not assessed for tax purposes and does not therefore, contribute anything toward the cost of supporting the governments which protect and preserve the continued existence of the property. These reasons are as follows: (1) In the case of *Washburn v. Gregory*, 1914, 125 Minn. 491, 147 N.W. 706, the Minnesota Supreme Court determined that where mineral interests are owned separately from the surface interests in real estate, the mineral interest is a separate interest in land, separately taxable, and does not forfeit if the overlying surface interest forfeits for nonpayment of taxes due on the surface interest; (2) Since this 1914 decision, mineral interests owned separately from the surface have been valued and assessed for tax purposes, as a practical matter, only if the value of the minerals has been determined through drilling and drill core analysis, and (3) The absence of any taxation of mineral interests owned separately from the surface, except where drilling analysis is available, has encouraged the separation of ownership of surface and mineral estates and resulted in the creation of hundreds of thousands of acres of untaxed

mineral estate lands which thus are immune from tax forfeiture. The legislature also finds that the province of Ontario in Canada, which has land ownership patterns and mineral characteristics similar to that of Minnesota, has imposed a tax of \$.50 an acre on minerals owned separately from the surface since 1968, and \$.10 an acre before that. The legislature further finds that the identification of separately owned mineral interests by taxing authorities requires title searches which are extremely burdensome and, where no public tract index is available, prohibitively expensive. This result is caused in part by the decision in *Wichelman v. Messner*, 1957, 250 Minn. 88, 83 N.W. (2d) 800, where the so called '40 year law' was held inapplicable to mineral interests owned separately from surface interests. On the basis of the above findings, and for the purpose of requiring mineral interests owned separately from surface interests to contribute to the cost of government at a time when other interests in real property are heavily burdened with real property taxes, the legislature concludes that the taxation of severed mineral interests as provided in section 273.13, subdivision 2a is necessary and in the public interest, and provides fair taxation of a class of real property which has escaped taxation for many years * * *." Minn. St. 272.039.

Plaintiffs, owners of severed mineral interests situated primarily in northern Minnesota, brought this action seeking a declaration that the registration, forfeiture and tax provisions of the mineral registration act are unconstitutional and an injunction prohibiting their enforcement. The

district court, sitting without a jury, entered findings of fact which agreed with the legislative findings quoted previously. In addition the district court incorporated in its findings a description of the history and magnitude of the severed interest phenomenon contained in an amicus brief prepared by attorney W. K. Montague for the case of *Kangas-Jacobsen Dairy, Inc. v. Lloyd-Smith*, 241 Minn. 317, 62 N.W. 2d 915 (1954):

"They [severed mineral interests] are of wide extent: the entire length of the Mesabi Range from Gunflint Lake * * * down to Grand Rapids, to a width of probably twenty miles from the iron formation, is blanketed with mineral reservations, on each side of the east end of the Mesabi Range through Lake and Cook counties down to Lake Superior, a distance of fifty to sixty miles, nearly every forty has a mineral reservation. Large areas in Carlton and Crow Wing Counties are similarly covered. While we are not familiar with details of mineral reservations in other Northern Minnesota counties, we understand they are not uncommon. Every city and village on the Mesabi Range from Aurora through Eveleth, Virginia, Chisholm, Hibbing, down to Coleraine, is located on lands subject to mineral reservations. Every home, store, factory and farm in that area is subject thereto."

The district court's findings of fact concerning the taxation of severed mineral interests also incorporated a description contained in the amicus brief of attorney Montague:

"In a substantial number of cases the reservations [severed mineral interests] were created as a result of the tax laws, and do not represent arm's length negotiations between parties. They represent deliberate attempts to arrange a transaction under which the grantor could retain for generations his speculative interest in the minerals without carrying charges, and, if merchantable ore should ever be discovered, could re-acquire the surface without cost."

The district court specifically found that 140,000 to 145,000 acres of the 721,640 acres of severed mineral interests owned by plaintiff United States Steel were created through a series of transactions between United States Steel and its subsidiaries whose purpose was to avoid ad valorem property taxes on property valuable primarily for its mineral potential. The district court further found that plaintiffs paid ad valorem property taxes on approximately 3,212 of their 1,262,664 acres of severed mineral interests.¹ Reference to additional findings of fact follows where appropriate.

Based on its findings of fact the district court concluded that the registration, taxation, and forfeiture provisions were constitutional but that the procedures attending the forfeiture provisions were unconstitutional. By virtue of the latter conclusion the district court further concluded that defendants be enjoined from claiming or asserting an ownership in plaintiffs' mineral interests by reason of the forfeiture procedures. Judgment was entered accordingly. Plaintiffs appeal from that part of the judgment upholding

¹Of the 3,212 acres the majority were taxed at \$1.00 per acre pursuant to the tax on unmined taconite. Minn. St. 298.26.

the registration, taxation and forfeiture provisions; defendants appeal from that part of the judgment invalidating the procedures attending forfeiture and granting injunctive relief. We affirm the judgment of the district court in all respects.

The issues presented are the following: (1) Whether the classification of severed mineral interests for purposes of taxation violates the uniformity clause of the Minnesota Constitution; (2) whether the uniformity clause of the Minnesota Constitution requires that taxation of property be related in some way to its value; (3) whether the forfeiture provisions violate the due process clauses of the state and Federal constitutions; (4) whether the procedures attending the forfeiture provisions comport with the due process clauses of the state and Federal constitutions; and (5) whether the language governing the registration requirements is unconstitutionally vague.

1. The uniformity clause of the Minnesota Constitution reads in part:

"Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes * * *." Minn. Const. art. 10, § 1.

In applying that provision we have stated that the legislature has a wide discretion in classifying property for purposes of taxation.² Where the classification has a reason-

²The uniformity clause of our state constitution is no more restrictive upon the legislature's power to tax or classify than is the Equal Protection Clause of the Fourteenth Amendment. *Elwell v. County of Hennepin*, 301 Minn. 63, 221 N. W. 2d 538 (1974). The United States Supreme Court has stated that where taxation is concerned and no specific Federal right, other than equal protection, is involved, the states have considerable discretion. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356, 93 S. Ct. 1001, 35 L. ed. 351 (1973).

able basis in fact, the judgment of the legislature will not be disturbed. See *Johnson v. Donovan*, 290 Minn. 421, 188 N.W. 2d 864 (1971); *State v. Minnesota Farmers Mut. Ins. Co.* 145 Minn. 231, 176 N.W. 756 (1920). Every presumption being invoked in favor of the constitutionality of an act of the legislature, plaintiffs have the burden of proof to show beyond a reasonable doubt that the act conflicts with the uniformity clause of the state constitution. See *Elwell v. County of Hennepin*, 301 Minn. 63, 221 N.W. 2d 538 (1974).

Plaintiffs contend that they have met their burden in that the record shows that there is no difference between severed and unsevered mineral interests which can constitutionally justify the tax imposed on the former³ without similar treatment of the latter. Specifically plaintiffs argue that, to the extent that severed mineral interests have gone untaxed, so too have unsevered mineral interests escaped taxation. In addition plaintiffs argue that the practical

³The pertinent provisions of Minn. St. 273.13, subd. 2a, which subjects severed mineral interests to taxation, read in part: "Class 1b. 'Mineral interest', for the purpose of this subdivision, means an interest in any minerals, including but not limited to gas, coal, oil, or other similar interest in real estate, which is owned separately and apart from the fee title to the surface of such real property. Mineral interests which are filed for record in the offices of either the county recorder or registrar of titles pursuant to sections 93.52 to 93.58, constitute class 1b, and shall be taxed as provided in this subdivision unless specifically excluded by this subdivision. A tax of \$.25 per acre or portion of an acre of mineral interest is hereby imposed and is due and payable annually. If an interest filed pursuant to sections 93.52 to 93.58 is a fractional undivided interest in an area, the tax due on the interest per acre or portion of an acre is equal to the product obtained by multiplying the fractional interest times \$.25, computed to the nearest cent. However, the minimum annual tax on any mineral interest is \$2. No such tax on mineral interests is due and payable on the following: (a) Mineral interests valued and taxed under other laws relating to the taxation of minerals, gas, coal, oil, or other similar interests; (b) Mineral interests which are exempt from taxation pursuant to constitutional or related statutory provisions * * *."

problems attending the taxation of severed mineral interests; i.e., the difficulty in valuating and assessing severed mineral interests, apply with equal force to unsevered mineral interests. We disagree with plaintiffs' view of the record.

Upon the evidence the district court entered the following finding of fact:

"Where taxable real property includes the rights to both surface and mineral interests (estates), the assessed valuation, and hence the property tax levied, reflects the value, if any, assigned by market forces to the totality of these rights. Plaintiffs have failed to demonstrate that such 'unsevered' mineral rights have, like severed mineral interests, escaped ad valorem property taxation."

This finding is supported by the testimony of Peter N. Handberg, the St. Louis County Assessor. He testified that in determining the "market value" of a parcel of land for tax purposes he looks to "sales of comparable properties wherever they are available," and that for rural lands (which account for the bulk of severed mineral interests) "sales are the only basis" for determining market value. These comparisons are made on the assumption that the entire "bundle of rights" that comprise the fee simple interest in the parcel, including mineral rights, are merged in one owner.

The value determined by this method might very well be affected by the value of the mineral rights. Mr. Handberg so testified in response to a question put to him by one of plaintiffs' attorneys:

"Q. Now, as a practical matter, in St. Louis County, with the exception of the Mesabi or Biwabik Iron formation * * *, would you agree that the practice is and has been as long as you have known it, not to include the value of the minerals in arriving at an assessment where there is no objective evidence or reliable data to indicate whether or not there are minerals located therein?

THE WITNESS [Mr. Handberg]: I don't think that's a correct statement. I think that the value we put on the property based on sales of similar property do include a mineral value. For example, if the property is sold in an area where the mining companies are interested or many properties are sold, it drives up the sales prices of the property, and so we use the sale prices as a basis of our valuation."

The fact that assessors may not value mineral interests as a separate item is not significant. As Mr. Handberg's testimony clearly shows the value of a piece of property is a composite of a number of factors, one of which includes the value of the mineral interests if unsevered. Cf. *Independent School Dist. No. 99 v. Commr. of Taxation*, 297 Minn. 378, 211 N.W. 2d 886 (1973). In determining market value or property for ad valorem tax purposes, assessing authorities should consider and give due weight to every element and factor affecting market value. Therefore the district court's finding that unsevered mineral interests are valued and taxed under the normal ad valorem property tax system is adequately supported by the evidence. Since none of the parties disputes the district court's

findings that severed mineral interests have escaped taxation, we cannot say that the separate classification of severed mineral interests is without a reasonable basis in fact. *Johnson v. Donovan, supra.*

Concerning the separate taxation of severed mineral interests the district court made two critical findings. First, the district court found that most severed mineral interests cannot be assessed for ad valorem property tax purposes for two reasons:

“(1) The value of the mineral in the ground can only be determined by prohibitively expensive exploration such as drilling and drill core analysis; and

(2) Data currently available to assessors on sales and exchanges of the property rights in mineral estates (i.e., severed mineral interests) is very limited. Therefore, in most cases such available data is insufficient to permit the derivation of market values for individual severed mineral interests from the sales prices or values of comparable interests.”

Second, the district court found that every mineral interest in Minnesota has some value as a property interest regardless of its location, although the value of mineral interests may vary from one part of the state to another. The first finding is not contested.

Plaintiffs vigorously contest the second finding. They rely on the expert testimony of Donald Lindgren, a geologist, who testified that the value of plaintiff's mineral interests vary widely in value, some having no economic value at the present time. The record also contains, however, testimony of other expert witnesses who detailed the abun-

dance and distribution of minerals within the state, the history of mineral development, and the potential for future development. Even Mr. Lindgren testified to the potential for future development. On this record we cannot say that the district court's finding is clearly erroneous.

In sum the evidence supports the legislature's findings that a class of valuable property interests were escaping taxation because of the practicable difficulties in identifying, valuing, and assessing those interests within more traditional tax schemes. In light of this evidence we cannot say that the practical considerations which prompted the legislature to classify separately severed mineral interests and to impose a tax of \$.25 per acre per year or \$2.00 per year, whichever is greater, were unreasonable.

The practical considerations can serve as the basis for the classification and taxation of property was established long ago in *Mutual Benefit Ins. Co. v. County of Martin*, 104 Minn. 179, 116 N.W. 572 (1908).⁴ There this court upheld the taxation of mortgages separately from other personalty with the following language:

“There were good and sufficient reasons why a special method should be devised for the taxation of this kind of property. It is a notorious fact that the owners of securities in the form of bonds and notes have not been in the habit of paying their proportionate share of the taxes. This has been due in a measure to the ease with which the existence of such

⁴The United States Supreme Court has also recognized practical considerations as sufficient bases for state tax classifications. See *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356, 93 S. Ct. 1091, 35 L. ed. 2d 351 (1973); *Madden v. Kentucky*, 309 U. S. 83, 60 S. Ct. 406, 84 L. ed. 590 (1940).

property can be concealed from the tax officials. But when the owner of a note takes a mortgage on real estate as security and places it upon the public records, he exposes his ownership * * * and enables the assessor to reach him, * * * The owner is thus tempted to seek some devious method for escaping taxation, in order that he may be on an equality with the owner of an unsecured note or bond, which rests undiscovered in a safety deposit vault. * * * *Experience has shown that it is very difficult, if not impossible, to fairly and successfully tax this kind of property under the system ordinarily applied to personal property. This practical difficulty alone furnishes a basis for a classification, and justifies the legislature in devising a special method for the taxation of the subjects of that class.* * * * By requiring a registration tax, every mortgage security pays a moderate tax, and this, in the judgment of the legislature is preferable to the certain uncertainties of the old system." (Emphasis added.) 104 Minn. 182, 116 N.W. 574. Cf. *Johnson v. Donovan*, *supra*.

We think the reasoning in the *Mutual Benefit* case applies with equal force here. Here the taxation of several mineral interests in the same manner as other realty proved to be impracticable and also, because of this impracticability, had encouraged the separate ownership of surface and mineral estates. A class of property having some value was not paying its proportionate share of taxes. The remedy chosen by the legislature was to tax mineral interests on a uniform basis, which is but one part of the general system of mineral taxation. The tax is imposed only on those

mineral interests not "valued and taxed under other laws relating to the taxation of minerals, gas, coal, oil or other similar interests." Minn. St. 273.13, subd. 2a. For example: the state tells us that where the value of the minerals themselves is determined, a tax is levied on the basis of such value. Unmined iron ore, except certain low recovery ore, is designated as Class 1a real property, presently assessed at 50 percent of its market value, and taxed at the prevailing mill rate. Minn. St. 273.13, subd. 2. Low recovery iron ores also fall within class 1a but are valued at from 30 percent to 48-1/2 percent of market value. Minn. St. 273.15 Unmined taconites and iron sulphides are to be assessed and taxed on the basis of value with the one important difference that the tax may not exceed \$10.00 per acre. Minn. St. 298.26. Finally, all other severed mineral interests, to the extent they can be valued, are susceptible to ad valorem taxation pursuant to Minn. St. 272.04 in the same manner as other interests in land. In effect the legislature has directed that severed mineral interests be taxed in relation to value or production where possible but that under no circumstances can such an interest be taxed at less than \$2.00 per interest. We cannot say that the legislature has exceeded its discretion.

The cases upon which plaintiffs rely do not compel a contrary conclusion. In *State ex rel. Owen v. Donald*, 161 Wis. 188, 153 N.W. 238 (1915), the plurality opinion declared unconstitutional a statute which imposed a tax on severed mineral interests. The concurring opinion of Justice Timlin, however, indicates that the reason the statute was invalid was because its tax forfeiture provisions treated owners of several mineral interests differently from

owners of other property interests. Likewise, in *Northwestern Improv. Co. v. Morton County*, 78 N.D. 29, 47 N.W. 2d 543 (1951), the statute taxing severed mineral interests was unconstitutional because it imposed a tax on several mineral interests created by reservations in deeds but did not tax severed mineral interests created by a direct conveyance of the mineral interest. The court cited an earlier decision upon which plaintiffs heavily rely, *Northwest Improv. Co. v. State*, 57 N.D. 1, 220 N.W. 436 (1928), only for the proposition that a classification cannot be based solely on the manner mineral rights are severed from the surface interest. The North Dakota Supreme Court did not give the decision the broad interpretation the plaintiffs urge this court to adopt.

2. Plaintiffs also argue that the Minnesota Constitution requires that real property taxes be related to value. Plaintiffs have cited no authority, however, and we have discovered none, that directly supports their argument. To the contrary the language of the constitution and its interpretation by this court suggest that the controlling constitutional provision was specifically amended to eliminate the absolute requirement that taxes be related to value.

The Minnesota Constitution currently provides only that "[t]axes shall be uniform upon the same class of subjects * * *." Minn. Const. art. 10, § 1. Prior to 1906, however, the Minnesota Constitution required "taxes to be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state." Minn. Const. art. 9, § 1 (1957), amended 1869, 1881, 1894, 1906). Interpreting the prior constitutional language, this court de-

clared unconstitutional a probate fee arbitrarily based upon a cash valuation, *State v. Gorman*, 40 Minn. 232, 41 N.W. 948 (1889); and a tax of one cent per ton on iron ore mined within the state. *State v. Lakeside Land Co.* 71 Minn. 283, 73 N.W. 970 (1898). In response to a number of unfavorable tax decisions the people of the state amended the constitution in 1906 to its present broad provision. Anderson, *The Need for Constitutional Revision in Minnesota*, 11 Minn. L. Rev. 189, 204. The purpose of the 1906 amendment was to free the legislature from most of the previous constitutional restraints.

"The fair adjustment of tax burdens * * * demanded more comprehensive powers in the legislature; and the people, relying upon the responsibility of that body to its constituents, relaxed the restraints theretofore existing." *Reed v. Bjornson*, 191 Minn. 254, 259, 253 N.W. 102, 104 (1934).

The "wide-open tax amendment," as it was popularly called, eliminated the "absolute requirement of taxation of all property on the basis of a cash valuation." W. Anderson, *A History of the Constitution of Minnesota* 190 (1921).

The cases upon which plaintiffs rely do not directly support their position. In *Independent School Dist. No. 99 v. Commr. of Taxation*, 297 Minn. 378, 211 N.W. 2d 886 (1973), this court reversed a decision of the Tax Court because the record did not indicate whether the assessing authorities considered every element affecting market value as required by the statutory scheme. The decision did not, however, contain any language indicating market value was a constitutional requirement. Similarly, plaintiffs'

reference to Minn. St. 273.11 as legislative recognition that property must be taxed according to value can be equally rationalized as a legislative recognition of equality. See *In re Petition of Dulton Realty, Inc. v. State*, 270 Minn. 1, 15 132 N.W. 2d 394, 405 (1964).

Nor are cases involving the validity of assessments for real estate taxes persuasive. See *In re Petition of Dulton Realty, Inc. v. State*, *supra*; *In re Petition of Hamm v. State*, 255 Minn. 64, 95 N.W. 2d 649 (1959). Both cases simply require that taxes on any one piece of property be uniform in relation to the taxes levied on other property of the same class. It is true that this court said, in reference to the uniformity clause, that it does not "permit the adoption of an arbitrary yardstick of valuation for all properties which ignores their differences in actual market value." 255 Minn. 70, 95 N.W. 2d 654. Here however, none of the parties contest the fact that severed mineral interests cannot readily be valued. Taken together with the district court's finding that every mineral interest has some value as a property interest regardless of its location, the uniform tax imposed on severed mineral interests represents a reasonable exercise of the legislature's authority to tax a class of real property that has escaped taxation. The uniformity clause does not require absolute equality:

"* * * The distribution of the tax burden in such manner as seems equitable is recognized as a proper exercise of the power of taxation. The selection of subjects of taxation * * * is inherent in that power. The process of selection involves classification with resulting diversity in the subjects selected for taxation * * * as well as in the amount of the tax." C.

Thomas Stores Sales System, Inc. v. Spaeth, 209 Minn. 504, 297 N.W. 9, 16 (1941).

As noted earlier the separate classification of severed mineral interests is reasonable. Therefore the fact that the amount of tax may vary in some instances depending on the number of owners does not make the tax constitutionally infirm.⁵

Plaintiffs also have referred to cases from other jurisdictions which support their position. See, e.g., *State of Texas v. Federal Land Bank of Houston*, 329 S.W. 2d 847 (Tex. 1959); *Chicago and Northwestern Transportation Co. v. Pederson*, Bayfield County Circuit Court, December 18, 1975, affirmed, 80 Wis. 2d 566, 259 N.W. 2d 316 (1977). Those decisions are not persuasive, however, since those jurisdictions contain constitutional provisions dissimilar from that in our constitution. For example, the Texas Constitution expressly requires that all property be taxed in proportion to its value. Tex. Const. art. 8, § 1. Similarly, the Wisconsin Supreme Court, interpreting that state's

⁵Plaintiffs made a further argument that a tax which exceeds the value of the property tax is unconstitutional. The test whether a tax statute violates the due process clause of the Fourteenth Amendment is whether the tax is within the lawful power of the legislature. The due process clause is applicable only if the tax is so arbitrary as to compel the conclusion that the statute does not involve the exercise of the taxing power but a direct exercise of a different and forbidden power. *A. Magnano Co. v. Hamilton*, 292 U. S. 40, 54 S. Ct. 597, 78 L. ed. 1109 (1934). Any attempt to determine the constitutionality of a tax by its amount furnishes "no juridical ground for striking down a taxing act." 292 U. S. 47, 54 S. Ct. 602, 78 L. ed. 1116.

On this record we cannot say that the tax imposed on severed mineral interests is so arbitrary as to violate due process. The record clearly establishes that severed mineral interests were not paying any taxes, that some severed mineral interests were created to avoid ad valorem taxation, and that severed mineral interests have some value. The legislature's response, which assures that all severed mineral interests will pay at least some tax, is not unreasonable as an exercise of its power to tax.

uniformity clause, has stated that all property taxed must bear its burden equally on an ad valorem basis. See *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 424, 147 N.W. 2d 633, 641 (1967).

3. The statutory scheme at issue requires the owners of severed mineral interest to file a verified statement containing, *inter alia*, the legal description of the property upon or beneath which the severed mineral interest exists, and information indicating where the instrument from which the severed mineral interest was created or acquired, may be found. Minn. St. 93.52, subd. 2. If the owner of a severed mineral interest fails to file the verified statement within the allotted time period, the mineral interest forfeits to the state. Minn. St. 93.55. Plaintiffs argue that the registration and forfeiture provisions violate the due process clauses of the state and Federal constitutions.

Where an economic regulation is involved, due process requires that legislative enactments not be arbitrary or capricious; or, stated differently, that they be a reasonable means to a permissive objective. *Lee v. Delmont*, 228 Minn. 101, 36 N.W.2d 530 (1949); *McElhone v. Geror*, 207 Minn. 580, 292 N.W. 414 (1940); *Nebbia v. New York*, 291 U.S. 502, 54 S. Ct. 505, 78 L. ed. 940 (1934). Due process demands only that (1) the act serve to promote a public purpose, (2) it not be an unreasonable, arbitrary or capricious interference, and (3) the means chosen bear a rational relation to the public purpose sought to be served. *Federal Distiller's, Inc. v. State*, 304 Minn. 28, 229 N.W. 2d 144, appeal dismissed, *sub nom*, *Heaven Hill Distilleries, Inc. v. Novak*, 423 U.S. 908, 96 S. Ct. 210, 46 L. ed. 2d 137 (1975).

Plaintiffs do not seriously quarrel with the purpose of the act, which is to identify and clarify the obscure and divided ownership conditions of severed mineral interests in order to facilitate their development. Minn. St. 93.52, subd. 1. Plaintiffs do argue, however, that the registration requirement is unreasonable in that the record indicates that owners of severed mineral interests are not difficult to locate. But the record also contains evidence indicating that a large number of mineral interests were severed in the late nineteenth century and early twentieth century, that a large number of the severed mineral interests are fractionalized, and that the determination of ownership of the fractionalized mineral interests is time consuming and often hinders exploration and development of minerals. On this record we cannot say that registration requirement is unreasonable.

Plaintiffs also argue that the forfeiture provisions bear no reasonable or legitimate relationship to any end sought by the registration requirements. The basis for their argument is that under the prior statutory scheme, owners of severed mineral interests were given until January 1, 1975, to file the verified statements of ownership. The penalty imposed for the failure to file was to permit the Commissioner of Natural Resources to lease the mineral interest as agent for the owner. Minn. St. 1971, §§ 9352, subd. 2; § 93.55. Prior to the filing deadline, however, the legislature enacted the forfeiture provisions as the penalty for failure to comply with the registration requirement. Thus plaintiffs argue that the legislature was in no position to know whether the forfeiture provisions were necessary or not. While the record indicates that some statements were

not filed before the forfeiture provisions were in effect because the deadline had not expired, the record also indicates that, for whatever reason, the filings were not being made. Therefore the legislature could conclude that the penalty of forfeiture was necessary to ensure that the necessary filings would be made. The legislature also could have concluded that the former penalty provisions, i.e., allowing the state to lease the mineral interest, were inadequate in light of the tax imposed on severed mineral interests. Owners of severed mineral interests might well be reluctant to make the necessary filings and thereby subject their interest to taxation. Given the public purpose of the act, the means chosen by the legislature do not violate due process.

4. The statutory scheme at issue required that notice of the registration requirement and the attendant forfeiture provisions be given by publication of the scheme in a legal newspaper within each county in the months of October, November and December, 1973, and in two publications related to mining activities which have a nationwide circulation. Minn. St. 93.58. The scheme also provided that if the owner of a severed mineral interest fails to make the required filings within the allotted time period, the mineral interest forfeits to the state. Minn. St. 93.55. Thereafter anyone claiming an ownership interest in a severed mineral interest before forfeiture may commence an action to determine ownership and the fair market value both at the time of forfeiture and the time of bringing the action. The successful claimant recovers lesser of the two values. *Id.* Plaintiffs argue that the statutory scheme violates the due process clauses of the state⁶ and Federal con-

⁶Minn. Const. art. 1, § 7.

stitutions⁷ because the notice provisions are inadequate and because an owner of a severed mineral interest who fails to comply with the registration requirement is denied an opportunity for a hearing before the forfeiture occurs. We agree.

At a minimum the due process clause requires that deprivation of property be preceded by notice and an opportunity for a hearing appropriate to the case. *Mullane v. Central Hanover Tr. Co.* 339 U.S. 306, 70 S. Ct. 652, 94 L. ed. 865 (1950). The Mullane court discussed the sufficiency of notice as follows:

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (Citations omitted.) The notice must be of such nature as reasonably to convey the required information * * *. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied." 339 U.S. 314, 70 S. Ct. 657, 94 L. 3d. 873.

The question is whether the state's efforts of notification can be said to be reasonably calculated to apprise the owners of severed mineral interests of the pendency of the forfeiture. Cf. *Robinson v. Hanrahan*, 409 U.S. 38, 93 S. Ct. 30, 34 L. ed. 2d 47 (1972).

The state argues that notice by publication is constitu-

⁷U. S. Const. Amend. XIV.

tionally adequate here because of the practicalities and peculiarities associated with identifying and locating owners of severed mineral interests. See Minn. St. 93.52, subd. 1. It is true that the St. Louis County Assessor testified that information concerning the identification and ownership of severed mineral interests is not contained in public records and, where contained in private abstract records, is prohibitively expensive to obtain. But the record also contains testimony indicating that owners of severed mineral interest could be identified and located. The statute as written, however, does not distinguish between those owners who could be identified with little or no diligence and those whose identity, even with due diligence, could not be ascertained. Under these circumstances, we think notice by publication of the statutes alone is inadequate.

The United States Supreme Court has recognized that publication alone is not a reliable means of acquainting interested parties of the fact that their interests are subject to forfeiture:

“* * * Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper * * *.”
Mullane, 339 U.S. 315, 70 S. Ct. 658, 94 L. ed. 874.

We likewise have recognized the unreliability of notice by publication. *Meadowbrook Manor, Inc. v. City of St. Louis Park*, 258 Minn. 266, 104 N.W. 2d 540 (1960). In the instant case the chance of notice is further reduced in that the notice required to be published does not name those whose attention it is supposed to attract. Furthermore the state is not required to do anything, e.g., attachment, en-

try upon real estate, which might reasonably be expected to call to the owner's attention that his mineral interest is subject to forfeiture. Under these circumstances, notice by publication is inadequate where forfeiture is the penalty imposed for mere failure to act. Cf. *Lambert v. California*, 355 U.S. 225, 78 S. Ct. 240, 2 L. ed. 2d 228 (1957).

We are also in agreement with plaintiffs' argument that the statutory scheme attending the forfeiture provisions violates due process because it contains no provision for a hearing to determine the validity of the forfeiture. Due process requires, except in emergency situations, a hearing that is meaningful and appropriate to the nature of the case before a party can be deprived of a property interest. *Mullane, supra*. The statute in question contains, in part, the following language:

“If the owner of a mineral interest fails to file the verified statement * * * the mineral interest shall forfeit to the state. * * * After the mineral interest has forfeited to the state pursuant to this section, a person claiming an ownership interest before the forfeiture may recover the fair market value of the interest, only in the following manner. An action must be commenced within six years after the forfeiture under this section to determine the ownership.* * *.”
Minn. St. 93.55.

The language of the statute clearly provided that, upon the failure to file the verified statement, the mineral interest forfeits to the state; the only judicial determination to be made is whether the party thereafter claiming an ownership interest was the owner at the time of forfeiture. The

only remedy available to an owner whose interest has forfeited is the following:

"* * * Persons determined by the court to be owners of the interests at the time of forfeiture to the state under this section may present to the commissioner of finance a verified claim for refund of the fair market value of the interest. * * * Thereupon the commissioner of finance shall refund to the claimant the fair market value at the time of forfeiture or at the time of bringing the action, whichever is lesser, less any taxes, penalties, costs, and interest which could have been collected during the period following the forfeiture under this section, had the interest in minerals been valued and assessed for tax purposes at the time of forfeiture under this section * * * Minn. St. 93.55.

We cannot imagine a more clear violation of due process than the failure to provide a hearing before forfeiture. *Mullane, supra*.

Defendants argue that the constitutionally-required hearing is merely postponed and that the remedy provided is adequate under the circumstances. Defendants rely on *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. ed. 2d 556 (1972), wherein the court stated that, in limited circumstances, immediate seizure of a property interest, without an opportunity for a prior hearing, is constitutionally permissible. In determining whether an immediate seizure of a property interest may be constitutionally permissible, the court looks at the following: (1) whether the seizure is necessary to secure an important governmental or general

public interest, (2) whether there exists a special need for very prompt action, and (3) whether the state has kept strict control over its monopoly of force.

We do not think the *Fuentes* exception is applicable. First, in those cases cited by the Supreme Court as employing the exception, a party whose property interest was subjected to immediate seizure had an opportunity to contest the seizure itself. See, *Calero-Toledo v. Pearson Yacht Leasing Co.* 416 U.S. 663, 94 S. Ct. 2080, 40 L. ed. 2d 452 (1974); *Robinson v. Hanrahan*, 409 U.S. 38, 93 S. Ct. 30, 34 L. ed. 2d. 47 (1972); *Phillips v. Commissioner*, 283 U.S. 589, 51 S. Ct. 608, 75 L. ed. 1289 (1931). No such opportunity is available here.

Second, assuming *arguendo* that the *Fuentes* exception is applicable, defendants have not indicated why the prompt forfeiture provisions are necessary. See, e.g., *North American Storage v. Chicago*, 211 U.S. 306, 29 S. Ct. 101, 53 L. ed. 195 (1908) (postponement of notice and hearing constitutionally permissible to protect public from contaminated food). While forfeiture may be a necessary incentive to ensure filing, there does not appear to be any special need to dispense with the constitutionally required hearing before the forfeiture. Defendant's argument based on *Fuentes* is not persuasive.

Defendants also argue that the registration and forfeiture provisions contained in the mineral registration are sufficiently analogous in effect to the marketable title act, Minn. St. 541.023, which was upheld in *Wichelman v. Messner*, 250 Minn. 88, 93 N.W. 2d 800 (1957), as to allow the constitutionality of the former to be sustained on the strength of the latter. Briefly stated, the court's holding in *Wichelman* sustained the constitutionality of the mar-

marketable title act, which required those owning interests in "old conditions and restrictions," e.g., right of re-entry, possibility of reverter, to record notice of the continued existence of such rights or permit their extinguishment by the barring of future actions affecting possession based on any such conditions or restrictions.

Specifically defendants argue that the enactment of the legislation, the publication of the act's provisions in a legal newspaper in each county throughout the state, and the time period allowed within which to make the required filing, are sufficient to comport with due process. Defendants point out that a period of 9 months within which to file the required notice was approved vis-a-vis the marketable title act; the mineral registration act allowed at least 19 months. In *Wichelman*, however, the court discussed the amount of time given to make the required filings, not with respect to the sufficiency of notice, but with respect to the constitutional prohibition against retrospective legislation. The court specifically stated that lack of notice was not a valid consideration. 250 Minn. 110, 83 N.W. 2d 818. In any event we do not find defendants' analogy between the mineral registration act and the marketable title act to be persuasive.

The marketable title act was intended, as its name indicates, to "relieve a title from the servitude of provisions contained in ancient records which 'fetter the marketability of real estate.'" *Wichelman*, *supra*, 250 Minn. 100, 83 N.W. 2d 812. The legislature may have concluded that the servitudes arising from ancient records had outlived the reasons for their creation, that they may have been created the benefit of persons who are disinterested in the

observance of the conditions and restrictions, and that the interests impede the full economic use of property. Further, the marketable title act provided that the person against whom the act is invoked is conclusively presumed to have abandoned his interest in the property. Minn. St. 541.023, subd. 5. Thus the marketable title act was not intended to extinguish valid but inconvenient claims. The mineral registration act, on the other hand, extinguishes valid as well as invalid claims upon the mere failure to file. It is unlikely that the holders of mineral rights have any intention of abandoning their rights; thus, any conclusive presumption of abandonment would be devious and would amount to intellectual dishonesty. Under these circumstances publication is not adequate.

Again analogizing to the marketable title act and its interpretation in *Wichelman*, *supra*, defendants argue that the mineral registration act can be sustained as a statute of limitations in that the failure to file under either scheme divests an owner of a property interest. We disagree.

The purpose of a statute of limitations is to "prescribe a period within which a right may be enforced, afterwards withholding a remedy for reasons of private justice and public policy." *Bachertz v. Hayes-Lucas Lumber Co.* 201 Minn. 171, 176, 275 N.W. 694, 697 (1937). Statutes of limitations generally affect the remedy and not the right. *Baker v. Kelley*, 11 Minn. 480 (1866). The United States Supreme Court has recognized that the distinction between substantive rights and remedial or procedural rights vis-a-vis statutes of limitation may not be clear cut. Nevertheless the court has adopted as a matter of constitutional law the hypothesis that statutes of limitation go to matters

of remedy, not to destruction of rights. *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. ed. 1628 (1945). The mineral registration act, however, directly affects a property interest without any pretense of affecting a remedy only. The effect of defendants' argument is to destroy the distinction between substantive rights and procedural rights. While we recognize that the distinction may in some cases be difficult to discern, this case is not one of them.

Finally, defendants argue that the constitutionality of the mineral registration act can be sustained on the authority of the marketable title act in that both have the sanctions of a recording act.⁸ In support of their position defendants make the following points. First, the penalty for failure to comply with the marketable title act, as with the mineral registration act, is the possibility of complete divestiture of ownership of a property interest. Second, under both the marketable title act and the mineral registration act, forfeiture may be prevented by filing the required information. Finally, as noted in *Wichelman*, *supra*, the marketable title act and the mineral registration act both have as their justification improving the marketability of real estate. Therefore defendants conclude the mineral registration act is a valid exercise of the police power.

While the analogy to the sanctions of a recording act may have been proper in the context of the marketable title act which was directed principally at interests in property which have outlived the reasons for their creation,

⁸There is no question that recording acts are constitutional as a valid exercise of the police power. *Jackson v. Lamphire*, 28 U. S. (3 Pet.) 280, 7 L. ed. 679 (1830). See *American Land Co. v. Zeiss*, 219 U.S. 47, 31 S. Ct. 200, 55 L. ed. 82 (1911).

that analogy is not proper here. It is true that both the marketable title act and the mineral registration act attempt to remedy defects in the recording system through the imposition of similar penalty provisions. To that extent defendant's analogy is appropriate but only to that extent. As noted previously, the mineral registration act is not directed at interests created in ancient records which have outlived their usefulness but at all severed mineral interests whenever created. Further the marketable title act was limited to stale claims which could be presumed to be abandoned and of no value. The mineral registration act however, is not so limited. As the district court found, every mineral interest has some value as a property interest; some of plaintiffs' interest has some value as a property interest; some of plaintiffs' interests appear to be enormously valuable. Finally, the mineral registration act and traditional recording acts are easily distinguished by their operation and effect. The failure to file under a recording act does not automatically result in divestiture. Recording acts typically divest the rights of a grantee in an unrecorded conveyance only if his grantor conveys the same interest to a subsequent purchaser who purchases in good faith and for value. See *Minn. St. 507.34*. Since the consequences of failing to file are so different, what satisfies due process in terms of a recording act is not sufficient for the mineral registration act.

5. Plaintiffs argue that certain language used in *Minn. St. 93.52*, subd. 2, is so vague and ambiguous as to violate due process. The statute, with emphasis on the challenged language, reads in part as follows:

"* * * [E]very owner of a fee simple interest in *minerals*, hereafter referred to as a mineral interest,

in lands in this state, which interest is owned separately from the fee title to the surface of the property upon or beneath which the mineral interest exists, shall file for record * * * in the county where the mineral interest is located a verified statement citing section 93.52 to 93.58 and setting forth his address, his *interest in the minerals* and both (1) the legal description of the property upon or beneath which the interest exists, and (2) the book and page number or the document number * * * of the instrument by which the mineral interest is *created or acquired* * * *." (Emphasis added.) Minn. St. 93.52, subd. 2.

In considering plaintiffs' claim we begin with the presumption of constitutionality. A statute will not be declared void for vagueness unless it is so uncertain and indefinite that after exhausting all rules of construction it is impossible to ascertain legislative intent. *Wichelman, supra*. We further explicated the general rule in *Wichelman* with the following:

"* * * A statute will not be declared void for vagueness and uncertainty where the meaning thereof may be implied, or where it employs words in common use, or words commonly understood, or words previously judicially defined, or having a settled meaning in law, or a technical or other special meaning well enough known * * *, or an unmistakable significance in the connection in which they are employed. In short, legislation otherwise valid will not be judicially declared null and void on the ground that the same is unintelligible and meaning-

less unless it is so imperfect and so deficient in its details as to render it impossible of execution and enforcement, and is susceptible of no reasonable construction that will support and give it effect, and the court finds itself unable to define the purpose and intent of the legislature." 250 Minn. 111, 83 N.W. 2d 819.

Applying the legislative policy expressly stated in the mineral registration act, which is to identify and clarify the obscure ownership conditions of severed mineral interests in this state, we conclude that the alleged ambiguities raised by plaintiffs, being subject to reasonable constructions consistent with the legislature's intent, are not unconstitutionally vague. A short discussion of certain ambiguities raised by plaintiffs illustrates our conclusion.

For example, plaintiffs, relying on *Vang v. Mount*, 300 Minn. 393, 220 N.W. 2d 498 (1974), argue that the word "mineral" is ambiguous because what is included in a general mineral reservation depends on the intent of the parties and the circumstances surrounding the reservation. It is clear from the language of the statute and from the express legislative intent that the legislature intended owners of all severed mineral interests to register, regardless of what the parties intended to convey. For that reason plaintiffs' reliance on *Vang v. Mount* is misplaced.

Plaintiffs also contend that the phrase "owned separately from the surface" is ambiguous in that a mineral interest once severed but now owned by the same person who owns the surface might be considered still severed for purposes of Minn. St. 93.52, subd. 2. We do not agree. The plain purpose of the mineral interests owned by someone

other than the owner of the surface interest. Minn. St. 93.-52, subd. 1; 272.039. Where the surface and mineral interests are jointly owned, it is obvious that the mineral registration requirements do not apply.

A final example is plaintiffs' argument that the meaning of the requirement that the owner must refer to the "instrument by which the mineral interest is *created or acquired*" is ambiguous, one interpretation being that two such instruments might exist—one which created the instrument and one by which the present owner acquired the interest. The purpose of the statute being to identify current owners, the statute requires the statement in such a case to refer to the instrument by which the mineral interest was acquired. The legislature obviously included the disjunctive "or" in recognition of the fact that there may be cases where no deed or other instrument named the current claimant as owner. In those cases reference to the instrument creating the mineral interest is appropriate. We need not burden this opinion with examples of other ambiguities raised by plaintiffs. It is sufficient to say that the mineral registration act is not unconstitutionally vague.

Affirmed.

MR. CHIEF JUSTICE SHERAN, MR. JUSTICE OTIS, AND MR. JUSTICE ROGOSHESKE took no part in the consideration or decision of this case.

STATE OF MINNESOTA
OFFICE OF CLERK OF SUPREME COURT

ST. PAUL, MINN.

47346

ALLISON CONTOS, et al,

Appellants,

vs.

ROBERT L. HERBST, etc., et al,

Respondents,

ANDREW KORDA, etc.,

Respondent,

MINNESOTA CHIPPEWA TRIBE,

Respondent.

(PETITION FOR REARGUMENT FILED)

February 13, 1979

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

Application for reargument having been filed herein all further proceedings, except taxation of costs are stayed pending its determination.

Yours respectfully,

JOHN McCARTHY
Clerk Supreme Court.

A petition for reargument does not stay taxation of costs and disbursements.

A-144

47346

STATE OF MINNESOTA
IN SUPREME COURT

ALLISON CONTOS, DANIEL S. CASH, BARBARA JOHNSON, ALWORTH LAND AND IMPROVEMENT COMPANY, BURLINGTON NORTHERN, INC., CLOQUET LUMBER COMPANY, DOROTHY M. CROSBY, Individually and as Executrix of the Estate of JOHN Q. A. CROSBY, DAY DEVELOPMENT COMPANY, JAMES T. M. PREST, UNITED STATES STEEL CORP., ST. CROIX LUMBER COMPANY, TORINUS COMPANY, FIRST NATIONAL BANK OF MINNEAPOLIS, as Trustee under various instruments of trust, NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, BOISE CASCADE CORPORATION, DR. ERNEST A. GOFF, JR., and PAUL M. ANDRESEN,

Plaintiffs-Appellants,

vs.

ROBERT L. HERBST, Individually and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, Individually and as Auditor for St. Louis County; the STATE OF MINNESOTA, LEE VAN, as Commissioner of the Minnesota Department of Economic Development; ARTHUR C. ROEMER, as Commissioner of the Minnesota Department of Revenue, and the MINNESOTA CHIPPEWA TRIBE,

Defendants-Respondents.

PETITION FOR REHEARING

A-145

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STATE OF MINNESOTA
IN SUPREME COURT

ALLISON CONTOS, DANIEL S. CASH, BARBARA JOHNSON, ALWORTH LAND AND IMPROVEMENT COMPANY, BURLINGTON NORTHERN, INC., CLOQUET LUMBER COMPANY, DOROTHY M. CROSBY, Individually and as Executrix of the Estate of JOHN Q. A. CROSBY, DAY DEVELOPMENT COMPANY, JAMES T. M. PREST, UNITED STATES STEEL CORP., ST. CROIX LUMBER COMPANY, TORINUS COMPANY, FIRST NATIONAL BANK OF MINNEAPOLIS, as Trustee under various instruments of trust, NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, BOISE CASCADE CORPORATION, DR. ERNEST A. GOFF, JR., and PAUL M. ANDRESEN,

Plaintiffs-Appellants,

vs.

ROBERT L. HERBST, Individually and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, Individually and as Auditor for St. Louis County; the STATE OF MINNESOTA, LEE VAN, as Commissioner of the Minnesota Department of Economic Development; ARTHUR C. ROEMER, as Commissioner of the Minnesota Department of Revenue, and the MINNESOTA CHIPPEWA TRIBE,

Defendants-Respondents.

PETITION FOR REHEARING

TO: Supreme Court of the State of Minnesota

Now comes JAMES T. M. PREST, one of the Plaintiffs-

Appellants, who respectfully petitions the Supreme Court of the State of Minnesota, for a rehearing in the matter of Allison Contos, et al., Appellants, vs. Robert L. Herbst, et al., Defendants-Respondents, Clerk's File No. 47346, on the following grounds:

1. The Supreme Court has failed to consider whether in substance and effect, Laws, 1973, Chapter 650, Article XX is a tax statute, or is the exercise by the legislature, of a forbidden power. The question was raised on oral argument before the District Court, and before the Supreme Court. The Supreme Court refers in Footnote 5, of its Opinion, to *A. Magnano Co. v. Hamilton*, 292 U.S. 40, 54 S. Ct. 597, 78 L.Ed. 1109 (1934).

The two sentences taken by the Supreme Court from *A. Magnano Co. v. Hamilton*, supra, read in full, as follows, at page 601:

"Except in rare and special instances, the due process of law clause contained in the Fifth Amendment is not a limitation upon the taxing power conferred upon Congress by the Constitution. *Brushaber v. Union P.C. R.R.*, 240 U.S. 1, 24, 36 S. Ct. 236, 60 L. Ed. 493. And no reason exists for applying a different rule against a state in the case of the Fourteenth Amendment. *French v. Barber Asphalt Paving Co.*, 181 U.S. 324, 329, 21 S. Ct. 625, 45 L. Ed. 879; *Heiner v. Donan*, 285 U.S. 312, 326, 52 S. Ct. 358, 76 L.Ed. 772. That clause is applicable to a taxing statute such as the one here assailed only if the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct ex-

ertion of a different and forbidden power, as, for example, *the confiscation of property.*" (Emphasis added)

The present market value of severed mineral interests is in the order of 1½¢ per acre, in an undrilled area. (T-76) The 25¢ per acre "tax" represents 1600 percent of the present value of unsevered mineral interests. The scheme of the statute is to confiscate severed mineral interests and to vest title to them in the State, through a tax forfeiture proceeding.

2. The separation of the taxation of any real property interest from the fundamental principal that such taxation shall be in some manner, related to the value of the real property interest, is a matter of such great and overwhelming public interest that the Court's decision with respect to that matter, should be argued more fully. *M.S. 273.11.*

3. The Supreme Court has inadvertently through its decision, exercised a legislative function by creating a most favored class of severed mineral interest owner. This class is composed of those severed mineral interest owners who have failed to file a severed mineral interest statement, either deliberately or otherwise. Where the minerals are severed, but a severed mineral interest statement has not been filed, those severed minerals stand in the same position as existed prior to the passage of L. 1973, Chapter 650, Article XX, and are not subject to tax forfeiture. This judicial class affects some 5,000,000 to 11,000,000 acres of severed mineral interests. (Plaintiff-Appellant's Brief to the Supreme Court, page 46, Footnote 20)

Dated this 12th day of February, 1979, at Duluth, Minnesota.

Respectfully submitted,

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47346

STATE OF MINNESOTA
IN SUPREME COURT

ALLISON CONTOS, et al.,

Appellants,

vs.

ROBERT L. HERBST, Individually, and as Commissioner
of the Minnesota Department of Natural Resources, et
al.,

Respondents,

ANDREW KORDA, Individually, and as Auditor for St.
Louis County,

Respondent,

MINNESOTA CHIPPEWA TRIBE,

Respondent.

RESPONDENTS' ANSWER TO APPELLANT PREST'S
PETITION FOR REHEARING

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A-150

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A-151

47346

STATE OF MINNESOTA
IN SUPREME COURT

ALLISON CONTOS, et al.,

Appellants,

vs.

ROBERT L. HERBST, Individually, and as Commission-
er of the Minnesota Department of Natural Resources,
et al.,

Respondents,

ANDREW KORDA, Individually, and as Auditor for St.
Louis County,

Respondent,

MINNESOTA CHIPPEWA TRIBE,

Respondent.

RESPONDENTS' ANSWER TO APPELLANT PREST'S
PETITION FOR REHEARING

James T. M. Prest was a Plaintiff and Appellant in all
prior proceedings and was represented by able counsel
throughout these proceedings. The questions he alone is
now raising as attorney pro se have been considered and
determined by the District Court and this Court after full
and complete trial at the District Court level, exhaustive
briefing and thorough argument at both the District and
Supreme Court levels, and unusually careful and extended

deliberation by both the District and Supreme Courts. None of the other of the many parties to the proceeding, neither plaintiff nor defendant, has requested rehearing. For these reasons, and for reasons detailed below, no rehearing should be granted by this Court to Plaintiff-Appellant Prest.

Plaintiff-Appellant Prest lists three grounds for rehearing: (1) The Supreme Court has failed to consider the allegation that the tax is confiscatory; (2) the principle that the tax must be related to value needs more argument; and (3) a new class of tax-exempt property has been created. These three grounds are discussed briefly in the order set forth above.

(1) The Supreme Court has failed to consider the allegation that the tax is confiscatory.

This very point and Mr. Prest's own trial court testimony was specifically argued in Plaintiffs-Appellants' Supreme Court brief beginning at page 28 and continuing through at least page 30. The Defendants-Respondents' brief responded factually and legally to Plaintiffs-Appellants' arguments at pages 44 through 47, and also, in an ancillary manner, at pages 37 through 39. Plaintiff-Appellant Prest conveniently refers to his own testimony in this matter to the exclusion of testimony and related evidence presented by St. Louis County Assessor Peter Handberg, upon which the trial court found that

"[t]he average ad valorem property tax on 40 acres of undeveloped rural land in Saint Louis County in 1975 was slightly over \$18.00. However, in 1975 (for 1976 taxes) the assessor doubled the value of most lands in this category. Because of statutory limita-

tions the full effect of this increase on property taxes will not be felt until 1979, but at that time, if the current rate of increase continues, the *average ad valorem tax on 40 acres of undeveloped rural land will be approximately \$38.*" Findings 28 A-81 to A-82. (Emphasis added.)

This court, in footnote 5, page 14, in a paragraph omitted by Plaintiff-Appellant Prest in his quote of the same footnote, stated:

"On this record we cannot say that the tax imposed on severed mineral interests is so arbitrary as to violate due process. The record clearly establishes that severed mineral interests were not paying any taxes, that some severed mineral interests were created to avoid ad valorem taxation, and that severed mineral interests have some value. The legislature's response, which assures that all severed mineral interests will pay at least some tax, is not unreasonable as an exercise of its power to tax."

The record is full and clear on this first ground asserted by Plaintiff-Appellant Prest as a basis for rehearing. The District and Supreme Courts have made their decisions after thorough briefing and deliberation. The issue has been and should remain settled.¹

(2) The second ground upon which Plaintiff-Appellant Prest petitions for rehearing is that the "fundamental

¹In passing, it should also be noted that the relationship between the \$.25 per acre tax (\$10.00 per 40 acre tract) on severed minerals and the market value of real property in Minnesota is even more favorable today than at the time of trial in 1975.

principle" that real property taxation "shall be in some manner related to the value of the real property interest" was treated lightly by the courts and therefore needs more argument.

Plaintiff-Appellant Prest refuses to recognize that Minnesota's Constitution does not require real property taxes to be based upon value, and thus his request for rehearing on this ground is without foundation.

This Court, at pages 13 and 14 of its January 26 opinion, held as follows, after recalling the Constitutional history of Minnesota's "wide open tax amendment" and related case law:

" * * none of the parties contest the fact that severed mineral interests cannot be readily valued. Taken together with the district court's finding that every mineral interest has some value as a property interest regardless of its location, the uniform tax imposed on severed mineral interests represents a reasonable exercise of the legislature's authority to tax a class of real property that has escaped taxation."*
(Emphasis supplied.)

This holding is based upon review of a record which includes extensive testimony on value from a variety of witnesses. For example, Plaintiff's witnesses Prest, Blacik, Lindgren and Handberg; and defendants' witnesses Rafn and Meineke. This holding is also based upon extensive briefing and argument. For example, Appellant's brief to this Court, Part II, pages 22-36, and Defendants-Respondents brief to this Court, Part IIA, pages 25-44. No other single issue in the case was more thoroughly aired, both

factually and legally. Both the district and Supreme Courts gave the matter deliberate consideration, and decided adversely to the Plaintiffs-Appellants. The issue should remain at rest. The petition for rehearing on this ground should be denied.

(3) *The third ground upon which Plaintiff-Appellant Prest petitions for rehearing is that a new class of tax-exempt property has been created.*

In its opinion of January 26, 1979, this Court agreed that forfeiture for failure to timely file is a Constitutionally appropriate penalty: "Given the public purpose of the act, the means [forfeiture] chosen by the legislature do not violate due process." Since the procedural infirmities cited by this Court relating to notice and hearing are susceptible of remedial action by the Legislature, Plaintiff-Appellant Prest's argument is premature, at best, because the Legislature is just now becoming fully organized.

Furthermore, there is nothing in this Court's opinion or the statutes which prevents taxing authorities from identifying and taxing severed mineral interests which may not be registered at present. Given the fact that mineral registration statements were filed on almost three million acres (RA-5, 6, 7), taxing officials may now wish to consider undertaking the task of identifying the remaining untaxed severed mineral interests in their counties. In St. Louis County, where the problem of identifying owners of severed mineral interests is probably most acute, the Commissioner of Natural Resources has provided over \$25,000 to assist the County Recorder in the creation of a public tract index for the county and thus simplify the task of identifying owners of severed mineral interests.

Finally, if Plaintiff-Appellant Prest is serious about this third ground for rehearing, his timing for raising it is curious. He should have joined Defendants-Respondents in their brief to this Court, Part III, where forfeiture for failure to timely register, and the procedures attendant to the forfeiture, were argued as being necessary to identify the owners of severed mineral interests. Having chosen to ignore the subject when it was in issue, he should be confined to the alternative of raising the subject in the future, if the Legislature either fails to act or acts in a manner which he judges to be worthy of judicial review.

For the above reasons, the petition for rehearing on this third ground should be denied.

CONCLUSION

Plaintiff-Appellant Prest, alone of all of the individual and corporate plaintiffs, appears dissatisfied with his representation at proceedings before the District and Supreme Courts. He alone urges the Court to plough ground which has previously been thoroughly ploughed. However, his petition identifies no controlling statute, decision, or principle of law, any material fact, or any material question in the case which this Court, after deliberating the matter for over one year following oral argument, can be said to have overlooked, failed to consider, misapplied, or misconceived. Having thus not met the requirements of Rule 140 of the Minnesota Rules of Civil Appellate Procedure, his petition should be denied.

Dated: February 26, 1979.

Respectfully submitted,

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A-158

STATE OF MINNESOTA
OFFICE OF CLERK OF SUPREME COURT

ST. PAUL, MINN.

ALLISON CONTOS, et al.,

Appellants,

vs.

ROBERT L. HERBST, etc., et al.,

Respondents,

ANDREW KORDA, etc.,

Respondent,

MINNESOTA CHIPPEWA TRIBE,

Respondent.

A-159

(PETITION DENIED)

March 13, 1979

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied and stay vacated.

Yours respectfully,

JOHN McCARTHY
Clerk Supreme Court

A-160

SUPREME COURT OF THE UNITED STATES

No. A-1076

JAMES T. M. PREST,

Appellant,

vs.

ROBERT L. HERBST, et al.,

ORDER

UPON CONSIDERATION of the application of the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extending to and including July 11, 1979.

Dated this 12th day of June, 1979.

/s/ HARRY A. BLACKMUN

Associate Justice of the Supreme Court of
the United States

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State Ex. #7

SUMMARY
OF
PLAINTIFFS' SEVERED MINERAL OWNERSHIP
AND
PROPERTY TAX BURDEN¹

Plaintiff	Total Severed Mineral Interest Ownership (Acres)	Severed Mineral Interests Subject to Ad Valorem Property Taxation in 1974 (Acres)
Allison Contos	761	440 ²
Daniel S. Cash	761	440 ²
Barbara Johnson	761	440 ²
Alworth Land & Improvement Co.	10,520	100 ²
Burlington Northern, Inc.	237,689	0
Cloquet Lumber Co.	81,208	0
Dorothy M. Crosby	33,230	0
Day Development Co.	21,485	(80) ³
James T. M. Prest	91,000	760
United States Steel Corp.	721,640	712 ⁴
St. Croix Lumber Co.	23,400	0
Torinus Co.	120	0

¹ Source: Plaintiffs' answers to defendants' interrogatories.

² \$1.00 per acre unmined taconite tax. Minn. Stat. § 298.26 (1974).

³ Plaintiff is not certain whether a tax was levied. If it was, it was paid by Ontario Iron Company which is leasing the interests.

⁴ Total taxes: \$2,885.32 of which \$607.20 was attributable to the \$1.00 acre unmined taconite tax.

Plaintiff	Total Severed Mineral Interest Ownership (Acres)	Severed Mineral Interests Subject to Ad Valorem Property Taxation in 1974 (Acres)
First National Bank of Minneapolis	4,209	240 ²
Northwestern National Bank of Minneapolis	15,080	0
Boise Cascade Corp.	17,680	0
Dr. Ernest A. Goff, Jr.	1,880	0
TOTAL	1,261,424	3,212⁵

The interests of Paul Andresen are as follows:

Personal interest	80 acres	no tax
Trust interest	1160 acres	no tax

$$\begin{array}{r} 5 \quad 3,212 \\ \hline 1,261,424 = .0025 = .25\% \end{array}$$

COUNTIES IN WHICH
PLAINTIFFS OWN SEVERED
MINERAL INTERESTS¹

Plaintiff	Counties
Allison Contos	Cook, Crow Wing, St. Louis
Daniel S. Cash	Cook, Crow Wing, St. Louis
Barbara Johnson	Cook, Crow Wing, St. Louis
Alworth Land and Improvement Co.	Aitkin, Itasca, Lake, St. Louis
Burlington Northern, Inc.	Aitkin, Anoka, Becker, Beltrami, Benton, Carlton, Carver, Cass, Chisago, Clay, Clearwater, Cook, Crow Wing, Douglas, Grant, Hubbard, Isanti, Itasca, Kanabec, Kandiyohi, Kittson, Koochiching, Lake, Lyon, Marshall, Meeker, Mille Lacs, Morrison, Norman, Otter Tail, Pennington, Pine, Pipestone, Polk, Red Lake, Rock, Roseau, St. Louis, Sherburne, Stearns, Stevens, Swift, Todd, Wadena, Washington, Wilkin, Winona, Wright, Yellow Medicine.
Cloquet Lumber Co.	Cook, Lake, St. Louis
Dorothy M. Crosby	Cass, Cook, Crow Wing, Itasca, Koochiching, Lake

¹ Sources: Stipulation of Facts and Plaintiffs' answers to defendants' interrogatories.

Plaintiff	Counties
Day Development Co.	Itasca, Morrison, St. Louis
James T. M. Prest	Becker, Beltrami, Clay, Douglas, Grant, Hubbard, Itasca, Koochiching, Marshall, Mille Lacs, Morrison, Otter Tail, Pennington, Pine, Polk, Roseau, St. Louis, Todd, Wadena, Wilkin
United States Steel Corp.	Aitkin, Becker, Beltrami, Carlton, Cass, Cook, Crow Wing, Hubbard, Itasca, Kittson, Koochiching, Lake, Marshall, Otter Tail, Pennington, Polk, Red Lake, Roseau, St. Louis
St. Croix Lumber Co.	Lake, St. Louis
Torinus Co.	St. Louis
First National Bank of Minneapolis	Aitkin, Cass, Crow Wing, Meeker, Otter Tail, St. Louis, Todd
Northwestern National Bank of Minneapolis	Aitkin, Crow Wing, Hubbard, Itasca, Morrison, St. Louis
Boise Cascade Corp.	Cook, Itasca, Koochiching, Lake of the Woods, St. Louis
Dr. Ernest A. Goff, Jr.	Itasca, St. Louis

SUMMARY OF SEVERED MINERAL INTEREST FILINGS

County	Number of Statements	Acres
Aitkin	310	94,500 approx.
Anoka	102	167.375 on 30 stmts.
Becker	155 approx.	50,276.00 approx.
Beltrami	70	120,520.00 approx.
Benton	120	14,685.00
Big Stone	78	—
Blue Earth	1	160.00
Brown	1	320.00 (undiv. 50% int.)
Carlton	255	31,857.00
Carver	4	495.21
Cass	521	180,751.52
Chippewa	20	2,435.00
Chisago	130	17,647.67
Clay	60	9,851.00 approx.
Clearwater	49	11,485.03
Cook	343	204,360
Cottonwood	6	876.90
Crow Wing	—	—
Dakota	31	3,921.5
Dodge	8	920.00
Douglas	59	6,504.02
Faribault	1	see description
Fillmore	—	—
Freeborn	8	1,040.00
Goodhue	8	960.00
Grant	59	5,172.35
*Hennepin	31 (2)	2,521.69 (.5)

* Submitted by Register of Deeds. Registrar of Titles also submitted figures shown in parenthesis.

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County	Number of Statements	Acres
Houston	27	4,546.00 approx.
Hubbard	215	128,595.34
Isanti	186	18,912.00
Itasca	1,409	—
Jackson	1	160.00
Kanabec	64	7,531.00
Kandiyohi	—	—
Kittson	99	55,260.00 (5,000 dup.)
Koochiching	155	64,942.00
Lac Qui Parle	40	5,340.00
Lake	623	321,882
Lake of the Woods	13	7,470.17
LeSueur	4	see descriptions
Lincoln	70	see descriptions
Lyon	39	7,648.00
McLeod	2	198.06
Mahnomen	20	3,600.00 approx.
Marshall	68	12,730.00
Martin	1	160.00
Meeker	78	10,082.38
Mille Lacs	68	5,735.87
Morrison	308	68,141.89
Mower	22	3,376.00 approx.
Murray	16	2,527.58
Nicollet	4	285.65
Nobles	2	180.00
Norman	40 approx.	4,000.00
Olmsted	31	5,112.82 approx.
Otter Tail	226	31,604.70 approx.
Pennington	35	5,149.96

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County	Number of Statements	Acres
Pine	180 approx.	30,500.00 approx.
Pipestone	30	3,855.00
Polk	68	9,967.89
Pope	163	26,647.48
Ramsey	7 (Taxation Dept - 7)	— (246.45)
Red Lake	34	4,767.00
Redwood	0	0
Renville	24	2,765.00
Rice	0	0
Rock	9	1,167.48
Roseau	61	9,560.00
St. Louis	3,969	1,026,718
Scott	9	1,051.00
Sherburne	65	9,312.00
Sibley	0	0
Stearns	97	12,776.86
Steele	3	400.00
Stevens	36	5,220.03
Swift	74	13,294.03
Todd	253	43,559.00
Traverse	24	4,775.00
Wabasha	15	3,333.18
Wadena	—	—
Waseca	0	0
Washington	49	5,554.00 approx.
Watsonwan	1	80.00
Wilkin	75	15,468.00 approx.
Winona	32	—
Wright	111	9,871.59
Yellow Medicine	38	5,800.00 approx.
TOTAL	11,725	2,782,367